

**Routine Program Changes  
To  
Commonwealth of Virginia Coastal Management Program**

**Draft Request for Concurrence  
March 17, 2008**

**Administration of Game, Inland Fisheries, and Boating  
Code of Virginia Title 29.1, Chapters 1, 3, 4, and 5**

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## **INTRODUCTION**

The following constitutes a request by the Commonwealth of Virginia for the National Oceanic and Atmospheric Administration (NOAA) Office of Ocean and Coastal Resource Management (OCRM) to concur with a Routine Program Change to the Commonwealth of Virginia's Coastal Management Program (CMP).

The Commonwealth of Virginia has revised the Commonwealth's enforceable policies in Code of Virginia Title 29.1 (formerly Title 29), Chapters 1, 3, 4, and 5 known as Game, Inland Fisheries and Boating. Title 29.1 addresses the authority of the Board of Game and Inland Fisheries ("Board") to promulgate rules and regulations for the protection of Virginia's inland fisheries and the administrative role of the Department of Game and Inland Fisheries ("Department") in the management and enforcement of all rules and regulations of the Board.

In accordance with requirements for Routine Program changes as set forth in the Coastal Zone Management Act (CZMA) §306(e), 15 C.F.R. §923.84, and the guidelines for Routine Program Changes contained in OCRM's Program Change Guidance from July 1996, the Commonwealth of Virginia has prepared the following analysis of the changes. The analysis: (A) explains why the proffered changes to the CMP are Routine Program Changes and not Amendments as described in 15 C.F.R. §923.80(d); and (B) identifies the enforceable policies affected, describes the nature of each program change, and examines the impact the changes have on the existing management program.

## **ANALYSIS**

The Commonwealth submits changes to Code of Virginia Title 29.1, Chapters 1, 3, 4, and 5 as a Routine Program Change. The statutory sections governing the administration of Game and Inland Fisheries were previously approved as part of the CMP in 1986 and this submission updates these provisions to reflect minor statutory changes to the program since that time.

### ***(A) Routine Program Change***

Pursuant to CZMA §306(e) and 15 C.F.R. §923.84, this analysis of the submitted change notifies OCRM of the Routine Program Change and explains why the program change will not result in an Amendment. Under 15 C.F.R. §923.80(d), amendments are defined as substantial changes in one or more of the five listed coastal management program areas:

- (1) uses subject to management;
- (2) special management areas;
- (3) boundaries;
- (4) authorities and organization; and
- (5) coordination, public involvement and the national interest.

OCRM's Program Change guidance states that a substantial change is a high threshold based on a case-by-case determination. Such determination is made by reviewing indicators of substantial change, such as whether new or revised enforceable policies address coastal uses or resources not previously managed, or make major changes in the way a state CMP manages coastal uses or resources. OCRM's Program Change guidance also states that an explanation why a proposed change will not result in an Amendment should describe the elements of the State CMP that are affected.

The provisions being submitted are primarily recodifications giving new section numbers to the statutory provisions already approved by NOAA as part of the original CMP. In 1987, the Virginia General Assembly recodified Va. Code Title 29 - Game, Inland Fisheries and Dogs to Title 29.1 - Game, Inland Fisheries and Boating, reorganizing the prior sections for easier use, greater precision, and clarity. The following chart illustrates the pertinent Chapter locations in former Title 29 as recodified in Title 29.1.

<b>Title 29 1986</b>	<b>Title 29.1 2008</b>
Chapter 1 In General Chapter 2 Commission of Game and Inland Fisheries	Chapter 1 Administration of Game and Inland Fisheries
Chapter 5 Licenses	Chapter 3 Licenses
Chapter 6 Permits Required	Chapter 4 Permits Required
Chapter 8 General Game and Fish Laws	Chapter 5 Wildlife and Fish Laws

At the time of recodification, the Commission of Game and Inland Fisheries (Commission) was renamed the Board of Game and Inland Fisheries (Board) and the Department of Game and Inland Fisheries (Department) was created. Concurrently, the Commission's power and duties, as evidenced under particular sections of Title 29.1, Chapters 1-5, were transferred to the Board and the Department. The Commission's authority to promulgate rules and regulations for the protection of Virginia's inland fisheries was vested in the Board. At the same time, the Commission's power and duties to administer and enforce the laws and regulations were assigned to the Department. This reassignment in 1987 did not result in substantial changes to the Coastal Management Program approved in 1986.

In the same manner that the Commission's power and duties to promulgate rules and regulations and administer the CMP were dispersed throughout former Title 29, the assigned power and duties of the Department and the Board are now distributed throughout particular sections of Title 29.1. The selected sections being submitted as a

routine program change represent those sections that specifically address the vested authority of the Department and Board to regulate inland fisheries, promulgate regulations and enforce the laws and regulations under the approved CMP.

The provisions being submitted do not substantially affect the uses subject to management under the CMP, special management areas, boundaries, authorities and organization, or coordination, public involvement and national interest.

### ***(B) Effects of Changes on Program***

Statutory changes to Title 29.1 are identified in the attached table. The table provides a description and analysis of each statutory change submitted for approval as part of the CMP. The table identifies each section that deals with authority to promulgate regulations and require licenses and permits, and relates it to the existing authority in the CMP as approved in 1986. The description and analysis of each change is organized in a format that identifies the enforceable policies, describes the nature of each program change, and examines the impact the changes have on the existing management program. The following narrative briefly summarizes the recodification and changes presented in the table.

## **CHAPTER 1- ADMINISTRATION OF GAME AND INLAND FISHERIES**

The submitted changes in Title 29.1, Chapter 1, concern the Commission of Game and Inland Fisheries and the division of its duties and authority to manage inland fisheries. In 1987, Title 29 was recodified as Title 29.1 and former Chapters 1 and 2 addressing the administration of the Commission were moved to Chapter 1. The Commission was renamed the Board of Game and Inland Fisheries and the Department of Game and Inland Fisheries was created.

The Commission's powers and duties found in former Sections 29-6 and 29-11 are now in Section 29.1-103 governing the Board, and remain largely the same. Minor additions that do not amount to a substantial change under the CMP have taken place. These include (1) a provision requiring the Board to create a Governance Manual, (2) the establishment of use fees, (3) a provision requiring the Board to elect a chairman, (4) provisions delineating the duties of the Board chairman, and (4) a provision requiring the Board to administer and manage the Virginia Fish Passage Grant and revolving Loan Fund. These changes are largely derived from the explicit duties and power previously held by the Commission to promulgate rules and regulations that conserve and promote Virginia's inland fisheries.

The Commission and the Director's powers and duties, formerly found in Sections 29-2, 29-8, 29-13, 29-14, 29-15, 29-16, 29-1.1 have been consolidated into Section 29.1-109. Minor additions to the Director's duties have been included in Section 29.1-109 to clarify the role of the Director. The Director, in addition to authority to "administer and enforce all rules of the Board," is expressly empowered to (1) make and enter into contracts incidental to the Director's powers, (2) consult with and keep informed of wildlife and

boating organizations, and (3) hire employees to assist the Board with its administrative duties. This is considered a minor change to the CMP as the Commission was previously vested with the authority to enforce *or cause to be enforced* all laws and regulations for the protection of fish in the inland waters of Virginia. Further minor changes include a provision subjecting the Director to confirmation and reconfirmation every four years. This is considered a minor change to the CMP as Section 29.1-109 (former Section 29-8) previously required the Commission (now the Board) to appoint an Executive Director to be the principal administrative officer of the Commission. Overall, the structural changes in the administrative authority over the CMP derive from the Commission's former authority and serve to improve the administration's effectiveness and consistency in carrying out the CMP.

There has been one other minor update to this part of the program. In 1989, Section 29.1-101.9 was enacted to include the ability to require fishways on obstructions beyond those obstructions declared nuisances under Section 29.1-532 (formerly Section 29-151). Section 29.1-101.9 requires that the owners of any dam or other artificial impediment to the migration of anadromous fish in any tributary of the Chesapeake Bay, after being offered funding, construct and provide fishways for anadromous fish. The purpose of the fishway is for anadromous fish to have free passage up and down streams. This change maintains consistency with the CMP, which from its inception required the Commission to focus its efforts on "opening Virginia's tidal rivers to the free passage of anadromous fish to their ancestral spawning grounds in the upper reaches of [Virginia's] rivers."<sup>1</sup> The Department may seek an injunction from the appropriate circuit court if the owner of a dam or other artificial impediment fails to provide for or maintain a fishway.

### **CHAPTER 3 - LICENSES**

In 1987, Title 29 was recodified as Title 29.1 and former Chapter 5 addressing Licenses was moved to Chapter 3. There have been minor updates to the program addressing fishing licenses. The submitted changes update the penalties available to the State for violations of the State fishing license law and authorize courts to impose Class 3 misdemeanors for such violations. In 1987, clarifying language was added to ensure that persons who attempt to purchase a license after arrest or notice of summons could not escape penalties provided for in the section. These changes maintain consistency with former Title 29, Section 29-51 *et seq.* which from its inception included penalties in the statute. Also, the submitted changes expand the scope of licenses to include "any temporary license issued by a clerk or agent to a buyer and authorized to be used in a manner prescribed by the Director." This is a minor change to the existing CMP as it originally established a protocol to issue licenses for inland fishing. Finally, there has been one minor stylistic change where the legislature identifies Virginia as "Commonwealth" rather than "State."

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<sup>1</sup> See Virginia Coastal Resources Management Program, Final Environmental Impact Statement p. III-5. 1985.

## **CHAPTER 4 - PERMITS**

In 1987, Title 29 was recodified as Title 29.1 and former Chapter 6 addressing Permits was moved to Chapter 4. There have been minor updates to the program addressing fishing permits and their corresponding fees. Section 29.1-412 (former §§ 20-103, 29-116) requires permits for netting and certain other activities and specifies penalties. Section 29.1-416 (former §29-110) has been amended to require a fee increase to net selected fish in the inland waters of Virginia. This change maintains consistency with former Section 29-110 which from its inception required the payment of fees to net selected fish. These changes fall within the existing duties and jurisdiction of the Commission which have now been transferred to the Department and Board.

## **CHAPTER 5 - WILDLIFE AND FISH LAWS**

In 1987, Title 29 was recodified as Title 29.1 and former Chapter 8 addressing General Game and Fish Laws was transferred to Chapter 5. The Commission's authority under former § 29-126 to promulgate regulations pertaining to the taking, capture, killing, possession, sale, purchase and transportation of inland water fish was transferred to the Board. This transfer is delineated under Section 29.1-501 A.

In addition, former §§ 29-233 and 29-234 were consolidated to form Section 29.1-566. The former sections authorized the Board, by regulation, to adopt endangered or threatened species from the federal list. The newly consolidated Section 29.1-566 requires the Board to consider recommendations from the Director of the Department of Conservation and Recreation and from other reliable data sources before the Board may declare a species endangered or threatened. Although the previous sections were not submitted as part of the original CMP, the Commission's authority to regulate, conserve and replenish depleted native fish and wildlife was part of its original authority to regulate granted in former §§29-125, 29-126, which were submitted and approved in 1986, and Virginia seeks approval at this time.

The Board, like the Commission, is required to publish regulations. Former Section 29-128.1 required the Commission to publish the regulations in specified locations. Section 29.1-504 requires publication to occur in a handbook or pamphlet, and proposed regulations must be filed in the Virginia Register.

In addition, minor amendments to the penalties section have been included in Chapter 5. Section 29.1-505 (former Section 29-129), has been amended to impose a Class 3 misdemeanor for violating any of the regulations pursuant to Title 29.1. This is considered a minor addition to the existing penalty requirement under the CMP as monetary fines and imprisonment were formerly prescribed in Section 29-129. Also, Section 29.1-505.1, enacted in 1989, makes it unlawful to conspire to commit any offense defined in Title 29.1.

Finally, Section 29.1-531 (former 29-148) makes it unlawful to take, possess, sell, or transport fish unlawfully. Prohibitions formerly imposed on trout and bass have been

expressly expanded to include all game fish. The Board was required to create and implement a trout identification system. Under the existing CMP policy, fishery biologists are required to evaluate fish stocks to assure healthy fish populations.<sup>2</sup> These amendments reflect such evaluations and policy. In addition, enumerated fish may not be sold for commercial purposes.

Section 29.1-532 (formerly 29-151) continues to make obstructions to navigation or the passage of anadromous or migratory fish a nuisance, with limited exceptions. The list of locations and fine were simplified in 1987 with the recodification, and the fine based on one percent of fishway construction cost.

### ***Chronology of Changes***

1987 Changes: Title 29 was replaced with Title 29.1. At the time of approval of Virginia's CMP, former Va. Code § 29-1 *et seq.* and § 29-3 *et seq.* set out the duties of the Commission and its Executive Director. The Virginia General Assembly recodified these to Va. Code 29.1-100 *et seq.*, assigning the administration of Game and Inland Fisheries to the Board and the Department. The Board is required to appoint a Director, who carries out the duties previously assigned to the Executive Director of the Commission. The Commission's authority to promulgate rules and regulations was assigned to the Board. The Virginia General Assembly recodified the Licenses chapter in Va. Code § 29-51 *et seq.* to Title 29.1-300 *et seq.* and substituted the term "Commonwealth" for the term "State." Legislation clarified the fact that persons buying fishing licenses subsequent to arrest or notice of summons could not escape penalties. The Virginia General Assembly recodified former Va. Code § 29-93 *et seq.* to Va. Code 29.1-400 *et seq.* The Commission's authority to promulgate rules and regulations in former Va. Code § 29-126 *et seq.*, was recodified for the Board at §29.1-501 *et seq.* The legislature amended the publications requirement for new, proposed regulations, the penalties imposed for violating the statute, and prohibitions on the purchase or sale of specified game fish.

1988 Changes: For permits for netting fish, the legislature substituted "three dollars and fifty cents" for "two dollars", substituted "seventeen dollars and fifty cents" for "ten dollars" and substituted "forty five dollars" for "twenty five dollars."

1989 Changes: The legislature enacted Section 29.1-101.9 to allow the Commission to require fishways not provided for in Section 29.1-532 (formerly Section 29-151). The legislature specified a Class 3 misdemeanor penalty for hunting, trapping or fishing without a license. The legislature added an annual \$350 nonresident harvester's permit fee for each boat used to take or catch fish in Back Bay and its tributaries.

1992 Changes: The legislature expanded the Board's duties to include the administration and management of the Virginia Fish Passage Grant and Loan Fund.

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<sup>2</sup> See Virginia Coastal Resources Management Program, Final Environmental Impact Statement, p. III-5, 1985.

1994 Change: The legislature added Subsection E to 29.1-531 that makes it “unlawful to offer for sale, sell, offer for purchase, or purchase at any time or in any manner species of game fish or the carcass or any part thereof, except as specifically permitted by law and only by the mean and within the numbers stated. A violation of the provisions of this subsection shall be punishable as provided in § 29.1-553.” This prohibition on sale of game fish was previously in subsection B, which prohibited unlawful takes.

1997 Changes: The legislature omitted fyke net from the list of specified nets required to obtain a permit.

2000 Change: The legislature expanded the term license to include temporary licenses. The legislature allowed hatchery trout to be sold for other reasons besides human consumption. The legislature also required the Board to establish a trout identification system for those trout offered for sale or for other uses directed by the Board.

2003 Change: The legislature authorized the Board to establish an admittance, parking and other use fees at Department owned facilities.

2004 Changes: The legislature authorized the Board to establish an annual hunting stamp. In addition, the legislature authorized the Board to promulgate fishing fees.

2006 Changes: The legislature defined the duties of the Board chairman. The legislature also required the Board to develop a Governance Manual and subjected the Director of the Department to confirmation and reconfirmation by the General Assembly every four years.

2007 Changes: The legislature authorized the Board to increase or decrease license fees for nonresidents by no more than \$50, and no more than every three years.

## **Conclusion**

The proposed program changes do not substantially affect the uses subject to management under the CMP, special management areas, boundaries, authorities and organization, or coordination, public involvement and national interest. Virginia requests concurrence in this Routine Program Change.



# **Title 29.1 Game, Inland Fisheries, and Boating**

## **Chapters 1, 3, 4, and 5**

### **Administration of Game and Inland Fisheries**

#### **CHAPTER 1**

<b>Statutory Change</b>	<b>Status of Law in 1986</b>	<b>Change to Law Since 1986</b>	<b>Significance of Change</b>
§ 29.1-101.9 Requirement for Fisheries	Enacted 1989, c. 5. [supplementing former §29-151 in originally approved CMP]	<ul style="list-style-type: none"><li>• Expands requirement in former §29-151 for removal of obstructions. Required the owner of every dam or other artificial impediment to the migration of anadromous fish in any tributary of the Chesapeake Bay to provide and construct fishways, after being offered funding, that ensures substantially free passage for anadromous fish.</li></ul>	<ul style="list-style-type: none"><li>• Not a substantial change. This section was added to ensure that fishways would be provided for in addition to § 29.1-532 (former §29-151). The existing CMP requires the Commission to ensure Virginia's tidal rivers are open for the free passage of anadromous fish to their ancestral spawning grounds.</li></ul>
§ 29.1-102 Board of Game and Inland Fisheries; how constituted; meetings	Part of the original CMP approval [was §§ 29-3, 29-4, 29-8, 29-17]	<ul style="list-style-type: none"><li>• Changed the name of the Commission of Game and Inland Fisheries to the Board of Game and Inland Fisheries (1987, c. 488).</li><li>• Required the Board to develop a Governance Manual that sets forth rules and procedures for the conduct of the Board's business (2006, cc. 69, 915).</li><li>• Delineated the duties of the chairman of the Board (2006, cc. 69, 915).</li><li>• Subjected the Director of the Department of Game and Inland Fisheries to confirmation and reconfirmation by the General Assembly every four years (2006, cc. 69, 915).</li></ul>	<ul style="list-style-type: none"><li>• Not a substantial change. The Board's power is derived from the explicit duties and power previously held by the Commission to promulgate rules and regulations for the preservation and protection of fish in the inland waters of Virginia.</li><li>• Not a substantial change. The Commission was previously required to elect an Executive Director under former § 29-8. The change strengthens the accountability of the Director.</li><li>• Does not substantially change uses or authority subject to management under</li></ul>

## Title 29.1 Game, Inland Fisheries, and Boating

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#### Administration of Game and Inland Fisheries

			the CMP, special management areas, authorities and organization, coordination, public involvement and national interest.
§ 29.1-103 Powers and Duties of the Board	Part of the original CMP approval [was §§ 29-11, 29-8, 29-6]	<ul style="list-style-type: none"><li>• Omitted statement, “to employ speakers and lecturers to disseminate information concerning the wildlife of the State and the protection, replenishment and propagation thereof.</li><li>• Omitted permissive statement allowing “educational television entities to use land under the jurisdiction of the Commission for the site location of towers and other transmission equipment” (1987, c. 488).</li><li>• Inserted language formerly contained in § 29-6 (now subsection 12) to read, “Adopt resolutions or regulations conferring upon the Director all such powers, authorities, and duties as the Board possesses and deems necessary or proper to carry out the purposes of this title (1987, c. 488).</li><li>• Amended Board’s tasks to include the administration and management of the Virginia Fish Passage Grant and revolving Loan Fund (1992, c. 887).</li><li>• Allowed the Board to establish admittance, parking, or other use fees at Department</li></ul>	<ul style="list-style-type: none"><li>• Not a substantial change. Educational activities formerly found under Va. Code § 29-11 <i>et seq</i> are largely preserved under § 29.1-103.</li><li>• See <i>above</i></li><li>• Not a substantial change. Under the existing CMP, the Commission possesses the power adopt regulations to carry out the purposes of the title.</li><li>• Does not substantially change uses or authority subject to management under the CMP, special management areas, authorities and organization, coordination, public involvement and national interest. Under the existing</li></ul>

## **Title 29.1 Game, Inland Fisheries, and Boating**

### **Chapters 1, 3, 4, and 5**

#### **Administration of Game and Inland Fisheries**

		<p>owned facilities (2003, c. 562).</p> <ul style="list-style-type: none"><li>• Authorized the Board to establish an annual hunting stamp (2004, c. 280).</li><li>• Authorized the Board, subject to explicit restrictions, to revise hunting, fishing, and trapping fees through the promulgation of regulations. The fees cannot be changed more than once every three years (2004, c. 1027; 2007, c. 35).</li></ul>	<p>CMP, the Commission is vested with the authority to conduct operations and activities to preserve and protect inland fisheries.</p> <p>Does not substantially change uses or authority subject to management under the CMP. Under the existing CMP, the Commission is required to establish fees. A revision of these explicit fees ensures that the Board is up to date with markets and the availability of certain fish.</p>
<p>§ 29.1-109 Department of Game and Inland Fisheries; Director</p>	<p>Part of the original CMP approval [was §§ 29-8; 29-15, 29-16; 29-1.1; 29-14; 29-2; 29-13]</p>	<ul style="list-style-type: none"><li>• Substituted Board for Commission.</li><li>• Defined the role and duties of the Department of Game and Inland Fisheries (1987, c. 488; 1999, c. 215).</li><li>• Required the Board to appoint a Director (1987, c. 488).</li><li>• Amended the Director's duties to include: enforcement power of all laws for the protection, propagation of all fish in the inland waters; initiate prosecution against those who violate the law and who seize wild animals and fish that they have illegally killed, caught, transported or shipped; make and enter into all contracts and agreements necessary for the performance of the</li></ul>	<ul style="list-style-type: none"><li>• Not a substantial change. The Department's power is largely derived from the explicit duties and power previously held by the Commission to enforce all laws that protect and preserve all fish in the inland waters of Virginia pursuant to the CMP.</li><li>• The duties of the Director are generally consolidated into one section and are uniform with former §§ 29-8; 29-16; 29-1.1; 29-15; 29-14; 29-2; 29-13. The added duties clarify the role of the Department and the Director under the existing CMP.</li></ul>

## Title 29.1 Game, Inland Fisheries, and Boating

### Chapters 1, 3, 4, and 5

#### Administration of Game and Inland Fisheries

		Director's duties; and to consult with and keep abreast of the activities of wildlife and boating organizations (1987, c. 488; 1999, c. 215; 2000, c. 10; 2006, cc. 69, 915).	
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### CHAPTER 3

Statutory Change	Status of Law in 1986	Change to Law Since 1986	Significance of Change
§ 29.1-300 Unlawful to hunt, trap or fish without a license	Part of the original CMP approval [was § 29.51]	<ul style="list-style-type: none"><li>Substituted "Commonwealth" for "State" (1987, c. 488).</li></ul>	<ul style="list-style-type: none"><li>Not a substantial change.</li></ul>
§ 29.1-335 Hunting, trapping, or fishing without a license	Part of the original CMP approval [was § 29-75]	<ul style="list-style-type: none"><li>Specified that the purchase of a license subsequent to arrest or notice of summons does not relieve a person from penalty of the section (1987, c. 488).</li><li>Included provision that mandates a violator of the section to be guilty of a Class 3 misdemeanor (1989, c. 421).</li><li>Amendment expanded the term license to include "any temporary license issued by a clerk or agent to a buyer and authorized to be used in a manner prescribed by the Director" (2000, c. 132).</li></ul>	<ul style="list-style-type: none"><li>Does not substantially change uses or authority subject to management under the CMP. General penalties for violators were previously authorized under § 29-75.</li><li><i>See above</i></li><li>Not a substantial change. Former § 29-75 previously required a license to fish in Virginia's inland waters. The inclusion of a temporary license in the list of required licenses does not substantially change uses or authority subject to management under the CMP.</li></ul>

## **Title 29.1 Game, Inland Fisheries, and Boating**

### **Chapters 1, 3, 4, and 5**

#### **Administration of Game and Inland Fisheries**

#### **CHAPTER 4**

<b>Statutory Change</b>	<b>Status of Law in 1986</b>	<b>Change to Law Since 1986</b>	<b>Significance of Change</b>
§ 29.1-412 Permits Required	Part of original CMP approval [was § 29-103, 29-116]	<ul style="list-style-type: none"><li>Deleted redundant references to wild birds and animals in permit section.</li><li>Substituted “Class 4 misdemeanor” for the prescribed fine. (1987, c. 488)</li></ul>	<ul style="list-style-type: none"><li>Not a substantial change. Simplified language requiring permit; and replaced \$100 fine with reference to Virginia’s schedule of offenses.</li></ul>
§ 29.1-416 Netting fish	Part of original CMP approval [was § 29-110]	<ul style="list-style-type: none"><li>Substituted “three dollars and fifty cents” for “two dollars”, substituted “seventeen dollars and fifty cents” for “ten dollars” and substituted “forty five dollars” for “twenty five dollars” (1988, c. 250).</li><li>Added annual \$350 nonresident harvester’s permit fee for each boat used to take or catch fish in Back Bay and its tributaries. (1989, c. 692).</li><li>Omitted fyke net from the list of specified nets requiring a permit (1997, c. 57).</li></ul>	<ul style="list-style-type: none"><li>Not a substantial change. The Commission was required under former § 29-110 to establish permit fees. The amendments do not substantially change the uses subject to management, the special management areas, and the authorities and organizations under the CMP.</li><li>Not a substantial change. The amendment does not substantially change the uses subject to management, the special management areas, and the authorities and organizations under the CMP.</li></ul>

## **Title 29.1 Game, Inland Fisheries, and Boating**

### **Chapters 1, 3, 4, and 5**

#### **Administration of Game and Inland Fisheries**

#### **CHAPTER 5**

<b>Statutory Change</b>	<b>Status of Law in 1986</b>	<b>Change to Law Since 1986</b>	<b>Significance of Change</b>
§ 29.1-501 Promulgation of Regulations; publication of proposed regulations or change therein; validation; evidentiary nature of publication	Part of the original CMP approval [was §§ 29-125, 29-126]	<ul style="list-style-type: none"><li>• Subsection A specifically states, “The Board may promulgate regulations pertaining to the hunting, taking, capture, killing, possession, sale, purchase, and transportation of any wild bird, wild animal, or inland water fish” (1987, c. 488).</li><li>• Amended the publication requirements for proposed regulations (1987, c. 488).</li><li>• Changed the place of filing proposed regulations to the Virginia Register of Regulations and omitted filing deadlines (1987, c. 488).</li><li>• Omitted “Executive” and “Commission” (1987, c. 488).</li></ul>	<ul style="list-style-type: none"><li>• Not a substantial change. The Commission’s existing authority under the CMP requires it to promulgate rules and regulations relating to the hunting, taking, capture, killing, possession sale, purchase, shipment, transportation, carriage or export of any fish from the inland waters as found under former § 29-125.</li><li>• Not a substantial change. The Commission is required under former § 29-126 to publish and file proposed regulations. The filing and publications amendments do not substantially change the uses subject to management, the special management areas, and the authorities and organizations under the CMP.</li></ul>
§ 29.1-502 Adoption of regulations	Part of the original CMP approval [was § 29-127]	<ul style="list-style-type: none"><li>• Substituted “Board” for “Commission” and amended Board’s procedural guidelines to adopt regulations and amendments to regulations (1987, c. 488).</li></ul>	<ul style="list-style-type: none"><li>• Does not substantially change the uses subject to management, the special management areas, and the authorities and organizations under the CMP.</li></ul>

## **Title 29.1 Game, Inland Fisheries, and Boating**

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		<ul style="list-style-type: none"><li>Deleted the manner in which a regulation or part thereof is overruled or repealed (1987, c. 488).</li></ul>	<ul style="list-style-type: none"><li>Procedural change. Does not substantially change the uses subject to management, the special management areas, and the authorities and organizations under the CMP.</li></ul>
§ 29.1-504 Annual publication of laws and regulations	Part of the original CMP approval [was § 29-128.1]	<ul style="list-style-type: none"><li>Substituted “Board” for “Commission” (1987, c. 488).</li><li>Modified the clause addressing publication of laws by replacing “shall be published once per year” with “shall be published annually” (1987, c. 488).</li><li>Deleted subsection B “In addition to the requirements of Subsection A, the Commission shall furnish the chairmen of the Rules Committees, and the appropriate standing committees, of each house of the General Assembly, by January seven of each year, a copy of any regulation adopted by the Commission during the proceeding calendar year which restricted, amended, or modified the effect of any statute, specifying the statute affected” (1987, c. 488).</li></ul>	<ul style="list-style-type: none"><li>Not a substantial change. The Commission is required under former § 29-128.1 to annually publish and file laws and regulations in a handbook or pamphlet. The amendments do not substantially change the uses subject to management, the special management areas, and the authorities and organizations under the CMP.</li></ul>
§ 29.1-505 Penalty for violation of regulations	Part of the original CMP approval [was § 29-129]	<ul style="list-style-type: none"><li>Replaced penalty for violating a regulation from “not less that \$10 nor more than \$100 and may be sentenced to 30 days in jail, either or both” to “a Class 3 misdemeanor unless another penalty is specified” (1987, c.</li></ul>	<ul style="list-style-type: none"><li>Not a substantial change. Former § 29-129 previously established penalties (misdemeanor) for the violation of a regulation. The amendments do not substantially change the uses subject to</li></ul>

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#### **Administration of Game and Inland Fisheries**

		488; 1988, c. 19).	management, the special management areas, and the authorities and organizations under the CMP.
§ 29.1-505.1- Conspiracy; penalty	Enacted in 1989, c. 362.	<ul style="list-style-type: none"><li>Added penalty for conspiring to commit any offense defined in Title 29.1 or any of the regulations of the Board of Game and Inland Fisheries.</li></ul>	<ul style="list-style-type: none"><li>Not a substantial change. Conspiracy is punishable as a common law offense.</li></ul>
§ 29.1-506 Prescribing seasons, bag limits and methods of taking and killing fish and game on lands and waters owned or controlled by the Board	Part of the original CMP approval [was § 29-129.1]	<ul style="list-style-type: none"><li>Language of the section modified by omitting the phrase “Notwithstanding any other provisions hereafter enacted or ordained of local or special law, or any local ordinance” (1987, c. 488).</li></ul>	<ul style="list-style-type: none"><li>Not a substantial change.</li></ul>
§ 29.1-507 Closing or shortening open season	Part of the original CMP approval [was § 29-130]	<ul style="list-style-type: none"><li>Substituted “Board” for “Commission” (1987, c. 488).</li><li>Minor stylistic changes (1987, c. 488).</li></ul>	<ul style="list-style-type: none"><li>Not a substantial change.</li></ul>
§ 29.1-508 Board to prescribe seasons, bag limits and methods of taking and killing fish and game on lands and waters owned or controlled by the Board.	Part of the original CMP approval [was § 29-130.1]	<ul style="list-style-type: none"><li>Substituted “Board” for “Commission of Game and Inland Fisheries” (1987, c. 488).</li><li>Minor stylistic changes (1987, c. 488).</li></ul>	<ul style="list-style-type: none"><li>Not a substantial change.</li></ul>
§ 29.1-531 Unlawful to take or attempt to take, possess, sell or transport fish except as permitted	Part of the original CMP approval [was § 29-148]	<ul style="list-style-type: none"><li>Substituted “Board” for “Commission” and omitted public hearing requirement (1987, c. 488).</li></ul>	<ul style="list-style-type: none"><li>Not a substantial change.</li></ul>



## **Title 29.1 Game, Inland Fisheries, and Boating**

### **Chapters 1, 3, 4, and 5**

#### **Administration of Game and Inland Fisheries**

		<ul style="list-style-type: none"><li>• Expanded prohibitions from species of trout and bass to any species of game fish and narrowed the prohibited methods of catch, transport and delivery of game fish (1987, c. 488).</li><li>• Stipulated the prohibition that specified fish in the listed areas cannot be sold for “commercial purposes” (1987, c. 488).</li><li>• Amended prohibition on catching bass, trout and perch and included all “game fish” (1987, c. 488).</li><li>• Changed penalty from “misdemeanor” to “Class 2 misdemeanor” (1987, c. 488).</li><li>• Substituted “by this article” with “law and only by the means and within the numbers slated” (1994, c. 413).</li><li>• Excluded “offer for sale, sell, offer to purchase, purchase” from the list of prohibited ways to take any species of game fish or the carcass, or any part thereof from subsection B and moved it to subsection E (1994, c. 848).</li><li>• Added subsection E that makes it “unlawful to offer for sale, sell, offer for purchase, or purchase at any time or in any manner species of game fish or the carcass or any part thereof, except as specifically permitted</li></ul>	<ul style="list-style-type: none"><li>• Not a substantial change. Former § 29-148 placed fishing restrictions on certain species of fish within the inland waters of Virginia.</li><li>• Not a substantial change. The Commission was vested with the authority under former § 29-148 to adopt rules and regulations to control fishing.</li><li>• Not a substantial change. Former § 29-148 previously established penalties (misdemeanor) for the violation of this section or regulation.</li><li>• Not a substantial change. Technical change.</li><li>• Not a substantial change. Former § 29-148 previously included a broad provision prohibiting the catch, capture, kill, take possess, deliver, or transport any species of game fish except as</li></ul>
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## Title 29.1 Game, Inland Fisheries, and Boating

### Chapters 1, 3, 4, and 5

#### Administration of Game and Inland Fisheries

		<p>by law and only by the mean and within the numbers stated. A violation of the provisions of this subsection shall be punishable as provided in § 29.1-553” (1994, c. 848).</p> <ul style="list-style-type: none"><li>• Amended the clause addressing the legality of selling trout lawfully acquired by omitting “for human consumption” (2000, c. 403).</li><li>• Expanded Board’s mandate to establish a system of trout identification offered for sale for table “or other uses as directed by the Board” (2000, c. 403).</li></ul>	<p>provided by law. The inclusion of selling or purchasing such game fish simply provides for explicitly that which was implicit in former § 29-148.</p> <ul style="list-style-type: none"><li>• Not a substantial change. Former § 29-148 previously included allowances for the lawful sale and purchase of trout.</li><li>• Not a substantial change. The amendment does not substantially change the uses subject to management, the special management areas, and the authorities and organizations under the CMP. The Board is required under the CMP to protect and preserve all inland fish.</li></ul>
§ 29.1- 532 Dams and fishways	Part of original CMP approval [was §29-151]	<ul style="list-style-type: none"><li>• Amended to change “State” to “Commonwealth,” remove list of river segments not under the section, and to eliminate exemption on dams 20 or more feet in height, and to change fines from \$1/day to 1 percent of construction or destruction cost of fishway/obstacle. (1987, c. 488).</li></ul>	<ul style="list-style-type: none"><li>• Not a substantial change. The amendment does not substantially change the uses subject to management, the special management areas, and the authorities and organizations under the CMP. The Board is required under the CMP to protect and preserve all inland fish.</li></ul>
§ 29.1-566 Regulations.	Not submitted as part of original CMP approval [was §§ 29-233, 29-234]; Regulatory authority was	<ul style="list-style-type: none"><li>• Authorized the Board to prohibit by regulation the taking, transportation, processing, sale, or offer for sale within the Commonwealth of any threatened or</li></ul>	<ul style="list-style-type: none"><li>• Not a substantial change in species covered or other issues. The Commission was authorized under former §29-11 to “adopt such other</li></ul>

## **Title 29.1 Game, Inland Fisheries, and Boating**

### **Chapters 1, 3, 4, and 5**

#### **Administration of Game and Inland Fisheries**

	also in §§29-11 and 29-126, 29-125 which were part of CMP.	endangered species of fish or wildlife. Board authorized to adopt federal list, and to consider recommendations from the Department of Conservation and Recreation and from other reliable data sources before by regulation, declaring a species not on the federal list endangered or threatened. (refs. to Board and DCR added 1987, c. 488, 1989, c. 553)	means as it may deem necessary to restock, replenish and increase any depleted native species of game birds, game animals, or fish”, and all powers to provide for “conservation, replenishment, propagation of and increasing the supply of ...fish and other wildlife.” Commission authorized to regulate taking, fishing, sales, etc. under former §§29-125, 29-126.
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§ 29.1-101.9. Requirement for fishways.

Notwithstanding any provision of § 29.1-532, including the existence or lack thereof of an exemption pursuant to § 29.1-532, the owner of every dam or other artificial impediment to the migration of anadromous fish in any tributary of the Chesapeake Bay, including that portion of the James River downstream from the City of Lynchburg, shall be responsible to provide appropriate fishways for anadromous fish as soon as reasonably possible after being offered financing from the Fund for the estimated construction cost of the fishways as provided in this article. Any owner of such a dam or other artificial impediment who fails to provide or to maintain fishways providing substantially free passage for anadromous fish may be compelled to provide such fishways by injunction in an action initiated by the Department in an appropriate circuit court. Nothing in this section shall relieve the owner of any dam or other object in a watercourse, which obstructs navigation or the passage of anadromous and other migratory fish, of any obligations or responsibilities under § 29.1-532.

(1989, c. 5, § 10.1-1221; 1992, cc. 464, 887.)

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§ 29.1-102. Board of Game and Inland Fisheries; how constituted; meetings.

The Commission of Game and Inland Fisheries is continued and shall hereafter be known as the Board of Game and Inland Fisheries.

A. The Board shall consist of not more than one member from each congressional district. Each member of the Board shall be appointed by the Governor, subject to confirmation by the General Assembly. Members shall be appointed for terms of one to four years; however, appointments shall be made in a manner whereby no more than three members shall have terms which expire in the same year. An appointment to fill a vacancy shall be made in the same manner, but only for the unexpired term. No person shall be eligible to serve more than two consecutive four-year terms. Members may be removed from office during their respective terms by the Governor.

B. The Board shall adopt rules and procedures for the conduct of its business that shall be set forth in a Governance Manual. The Board may establish committees to assist it with its duties and responsibilities. All decisions by a committee shall be reviewed by the Board, and shall only take effect if approved by the Board.

C. The Board shall elect one of its members as its chairman whose duties shall be limited to (i) presiding at all regular and called meetings of the Board; (ii) serving as the Board liaison to the Director, other Board members, and the Secretary of Natural Resources; and (iii) the other duties set forth in the Governance Manual as approved by a majority of the Board. The Board shall also elect a vice-chairman to preside in the absence of the chairman. Any additional duties of the vice-chairman shall be set forth in the Governance Manual. The Board shall annually elect one of its members as chairman and one of its members as vice-chairman. At such annual election, the chairman and vice-chair

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§ 29.1-103. Powers and duties of the Board.

The Board is responsible for carrying out the purposes and provisions of this title and is authorized to:

1. Appoint the Director of the Department.
2. Acquire by purchase, lease, exchange, gift or otherwise, lands and waters in the Commonwealth and to establish buildings, structures, dams, lakes and ponds on such lands and waters. However, it is the policy of the Commonwealth that there shall be no net loss of those public lands managed by the Department that are available for hunting in Virginia.
3. Conduct operations for the preservation and propagation of game birds, game animals, fish and other wildlife in order to increase, replenish and restock the lands and inland waters of the Commonwealth.
4. Purchase, lease, or otherwise acquire lands and waters for game and fish refuges, preserves or public shooting and fishing, and establish such lands and waters under appropriate regulations.
5. Acquire by purchase, lease, or otherwise, lands and structures for use as public landings, wharves, or docks; to improve such lands and structures; and to control the use of all such public landings, wharves, or docks by regulation.
6. Acquire and introduce any new species of game birds, game animals or fish on the lands and within the waters of the Commonwealth.
7. Restock, replenish and increase any depleted native species of game birds, game animals, or fish.
8. Have educational matter pertaining to wildlife published and distributed.
9. Hold exhibits throughout the Commonwealth for the purpose of educating school children, agriculturists and other persons in the preservation and propagation of wildlife in the Commonwealth.
10. Control land owned by and under control of the Commonwealth in Back Bay, its tributaries and the North Landing River from the North Carolina line to North Landing Bridge. The Board shall regulate or prohibit by regulation any drilling, dredging or other operation designed to recover or obtain shells, minerals, or other substances in order to prevent practices and operations which would harm the area for fish and wildlife.
11. Exercise powers it may deem advisable for conserving, protecting, replenishing, propagating and increasing the supply of game birds, game animals, fish and other wildlife of the Commonwealth.
12. Adopt resolutions or regulations conferring upon the Director all such powers, authorities and duties as the Board possesses and deems necessary or proper to carry out the purposes of this title.
13. Administer and manage the Virginia Fish Passage Grant and Revolving Loan Fund pursuant to Article 1.1 (§ 29.1-101.2 et seq.) of Chapter 1 of this title.
14. Establish and collect admittance, parking, or other use fees at certain Department-owned facilities as determined by the Board. Any daily fee established by the Board shall not exceed \$3. Any annual fee established by the Board shall not exceed the cost of an annual state resident fishing license pursuant to subdivision A 2 of § 29.1-310, or an annual state resident hunting license pursuant to subdivision 2 of § 29.1-303.

15. Establish and collect a use fee through the issuance of an annual hunting stamp required to be obtained to hunt on private lands managed by the Department through a lease agreement or other similar memorandum of agreement. The annual hunting stamp shall be in addition to the required licenses to hunt, and the cost of such stamp shall be the same as the cost of the annual state resident hunting license in § 29.1-303.

16. Revise, as it deems appropriate, through the promulgation of regulations as prescribed in Article 1 (§ 29.1-500 et seq.) of Chapter 5 of this title, the fees charged for all hunting, fishing and trapping licenses authorized under Articles 1 (§ 29.1-300 et seq.) and 2 (§ 29.1-340 et seq.) of Chapter 3 of this title, notwithstanding any other provision of this title. Beginning July 1, 2004, and no more frequently than once every three years thereafter, such license fees for residents may be increased or decreased no more than \$5. Beginning July 1, 2007, and no more frequently than once every three years thereafter, the Board may increase or decrease license fees for nonresidents, authorized under Article 1 (§ 29.1-300 et seq.) of Chapter 3 of this title, no more than \$50.

(Code 1950, §§ 29-6, 29-11; 1970, c. 254; 1979, c. 264; 1980, c. 301; 1987, c. 488; 1992, c. 887; 2003, c. 562; 2004, cc. 280, 1027; 2007, cc. 35, 906.)

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§ 29.1-109. Department of Game and Inland Fisheries; Director.

A. The Department of Game and Inland Fisheries shall exist to provide public, informational and educational services related to this title, and to serve as the agency responsible for the administration and enforcement of all rules and regulations of the Board, the statutory provisions of this title, and related legislative acts. The Department shall employ scientific principles and procedures, as developed, researched, recognized and accepted within the bounds of comprehensive professional wildlife resource management, in the management of the Commonwealth's wildlife and natural resources.

B. The Board shall appoint a Director, subject to confirmation and reconfirmation every four years by the General Assembly, to head the Department and to act as principal administrative officer. In addition to the powers designated elsewhere in this title, the Director shall have the power to:

1. Enforce or cause to be enforced all laws for the protection, propagation and preservation of game birds and game animals of the Commonwealth and all fish in the inland waters thereof. Inland waters shall include all waters above tidewater and the brackish and freshwater streams, creeks, bays, including Back Bay, inlets, and ponds in the tidewater counties and cities.
2. Initiate prosecution of all persons who violate such laws, and seize and confiscate wild birds, wild animals and fish that have been illegally killed, caught, transported or shipped.
3. Employ persons necessary for the administrative requirements of the Board and to designate the official position and duties of each. The salaries of all such employees shall be as provided in accordance with law.
4. Perform such acts as may be necessary to the conduct and establishment of cooperative fish and wildlife projects with the federal government as prescribed by acts of Congress and in compliance with rules and regulations promulgated by the Secretary of the Interior.
5. Make and enter into all contracts and agreements necessary or incidental to the performance of his duties and the execution of his powers, including, but not limited to, contracts with the United States, other state agencies and governmental subdivisions of the Commonwealth.
6. When practicable, consult with, and keep informed, wildlife and boating constituent organizations so as to benefit Virginia's wildlife and natural resources and accomplish the Department's mission.

(Code 1950, §§ 29-8, 29-16; 1952, c. 680, § 29-1.1; 1954, c. 632, § 29-15; 1962, c. 469, § 29-14; 1974, c. 59, § 29-2; 1979, c. 264, § 29-13; 1987, c. 488; 1999, c. 215; 2000, c. 10; 2006, cc. 69, 915.)

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§ 29.1-300. Unlawful to hunt, trap or fish without license.

It shall be unlawful to hunt, trap or fish in or on the lands or inland waters of this Commonwealth without first obtaining a license, subject to the exceptions set out in § 29.1-301.

(Code 1950, § 29-51; 1987, c. 488.)

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§ 29.1-335. Hunting, trapping or fishing without a license.

No person shall hunt, trap, or fish without having obtained a license when such a license is required. For the purposes of this article, the term "license" shall include any temporary license issued by a clerk or agent to a buyer and authorized to be used in a manner prescribed by the Director. Any person who violates this section shall be guilty of a Class 3 misdemeanor and shall pay to the clerk a fee equal to the cost of the required license to be paid into the state treasury and credited to the game protection fund.

The purchase of a license subsequent to an arrest or notice of summons to appear in court for hunting, trapping or fishing without a license shall not relieve the person from the penalties specified in this section.

(Code 1950, § 29-75; 1987, c. 488; 1989, c. 421; 1993, c. 839; 2000, c. 132.)

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§ 29.1-412. Permits required.

It shall be unlawful to exercise any privilege of the permits provided in this article without first having obtained the required permit.

Any person who violates any provision of this article shall be guilty of a Class 4 misdemeanor, and the permit shall be revoked.

(Code 1950, §§ 29-103, 29-116; 1962, c. 469; 1968, c. 242; 1987, c. 488.)

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§ 29.1-416. Netting fish.

A. The fee for a permit to net fish in inland waters, for private table use, or for sale where permitted, shall be as follows:

1. County dip net, three dollars and fifty cents each per year;
2. Gill net, eight dollars each per year;
3. Haul seine, seventeen dollars and fifty cents each per year; and
4. Haul seine to catch species designated by the Board for sale, forty-five dollars each per year.

B. The Board may permit a licensee to use dip nets or gill nets to take for sale fish of any designated species in the waters of Back Bay and its tributaries. However, any nonresident desiring to take or catch fish in Back Bay and its tributaries for which a permit is required and where such fishing is not prohibited, shall first pay \$350 per year to the Department for a nonresident harvester's permit. Such a permit shall be required for each boat used to take or catch fish in Back Bay and its tributaries, and shall be in addition to any other permit required for the activity involved.

(Code 1950, § 29-110; 1956, c. 343; 1974, c. 363; 1987, c. 488; 1988, c. 250; 1989, c. 692; 1997, c. 57.)

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§ 29.1-501. Promulgation of regulations; publication of proposed regulations or change therein; validation; evidentiary nature of publication.

A. The Board may promulgate regulations pertaining to the hunting, taking, capture, killing, possession, sale, purchase and transportation of any wild bird, wild animal, or inland water fish.

B. The full text or an informative summary of any proposed regulation or change in the regulations shall be published not less than fifteen nor more than thirty days before it may be acted upon. The publication shall name the time and place that the specified matters will be taken up, at which time any interested citizen shall be heard. If the proposed regulation or change in the regulations is of local application, the publication shall appear in a newspaper published in or within reasonable proximity to the affected locality. However, if the proposed regulation or change in the regulations is of statewide application, the publication shall be made in a sufficient number of newspapers having a general circulation throughout the entire Commonwealth.

C. A copy of proposed regulations or a change in the regulations, of either local application or statewide application, shall be published in the Virginia Register of Regulations pursuant to § 2.2-4031.

D. Prima facie evidence of any regulation may be given in all courts and proceedings by the production of a copy of the regulation, which shall be certified by the Director or his deputy.

(Code 1950, § 29-126; 1956, c. 178; 1960, c. 539; 1962, c. 478; 1974, c. 56; 1987, c. 488.)

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§ 29.1-502. Adoption of regulations.

The board may adopt regulations and amendments to regulations upon completion of all applicable hearing and notice requirements. The Board shall file the regulations with the Registrar of Regulations pursuant to § 2.2-4103.

(Code 1950, § 29-127; 1974, c. 56; 1979, c. 264; 1987, c. 488.)

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§ 29.1-504. Annual publication of laws and regulations.

All laws relating to hunting, fishing and trapping, together with the regulations of the Board, of both general and local application, shall be published annually by the Department in a handbook or pamphlet. The courts of the Commonwealth shall take judicial notice of all laws and regulations contained in such publication.

(1952, c. 608, § 29-128.1; 1979, c. 264; 1987, c. 488.)

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§ 29.1-505. Penalty for violation of regulations.

It shall be a misdemeanor to violate any regulation promulgated pursuant to this title. Any person violating such a regulation shall be guilty of a Class 3 misdemeanor unless another penalty is specified.

(Code 1950, § 29-129; 1987, c. 488; 1988, c. 19.)

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§ 29.1-505.1. Conspiracy; penalty.

If any person conspires with another to commit any offense defined in this title or any of the regulations of the Board of Game and Inland Fisheries, and one or more such persons does any act to effect the object of the conspiracy, he shall be guilty of conspiracy to commit the underlying offense and shall be subject to the same punishment prescribed for the offense the commission of which was the object of the conspiracy.

(1989, c. 362.)

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§ 29.1-506. Prescribing seasons and bag limits for taking fish and game.

After careful study of each species of wild bird, animal and fish within the jurisdiction of the Board in cities and counties of the Commonwealth, the Board shall have the power to prescribe the seasons and bag limits for hunting, fishing, trapping or otherwise taking such wild birds, animals and fish by regulation adopted as provided in this article.

(Code 1950, § 29-129.1; 1950, p. 411; 1952, c. 619; 1960, c. 537; 1970, c. 239; 1987, c. 488.)

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§ 29.1-507. Closing or shortening open season.

The Board may close or shorten the open season in any county or city (i) whenever extreme weather threatens the welfare of wild birds, wild animals or fish; (ii) whenever such wild birds, wild animals or fish have been seriously affected by adverse weather conditions; (iii) when investigation of the Board shows that there is an unusual scarcity of any species or; (iv) when there is substantial demand from any county or city. The Board shall immediately give notice of any closing or shortening of an open season by publishing the announcement in one or more newspapers having a general circulation in the county or city affected. The notice shall be published at least three days before the action becomes effective.

(Code 1950, § 29-130; 1987, c. 488.)

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§ 29.1-508. Board to prescribe seasons, bag limits and methods of taking and killing fish and game on lands and waters owned or controlled by Board.

The Board is hereby authorized to adopt rules and regulations to prescribe and enforce the seasons, bag limits and methods of taking fish and game on lands and waters owned by the Board and on lands owned by others but controlled by the Board.

(1960, c. 538, § 29-130.1; 1987, c. 488.)

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§ 29.1-531. Unlawful to take or attempt to take, possess, sell or transport fish except as permitted.

A. Unless otherwise provided by a regulation of the Board, it shall be unlawful for any person to take or attempt to take any fish in inland waters other than shad, herring or mullet, except by fishing with a hook and line or rod and reel, held in the hand.

B. It shall be unlawful to catch, trap, take, capture, kill, or attempt to take, capture or kill, possess, deliver for transportation, transport, cause to be transported, receive for transport, export, or import at any time or in any manner any species of game fish, or the carcass or any part thereof, except as specifically permitted by law and only by the means and within the numbers stated.

C. In Mecklenburg, Pittsylvania, Prince Edward, Charlotte, Campbell, Halifax, Amelia (except between Vaughn's Pond and Meadsville Dam), Caroline and King George Counties, in the City of Danville, and in the Meherrin River in Lunenburg County, it shall be lawful to fish with fish traps, fish pots or haul seines in any streams and waters, provided that no person shall catch fish with fish traps or fish pots or haul seines for commercial purposes. However, it shall be unlawful in such localities to remove from the waters thereof any game fish caught with fish pots, fish traps or haul seines, and any person doing so shall immediately return them to the waters. The Board shall have the authority to close any streams or rivers or parts of streams or rivers in such localities when the waters are stocked with fish by the Department.

D. It shall be lawful to sell or offer to sell trout which have been lawfully acquired, provided such trout have been propagated and raised in a hatchery or by other artificial means. The Board shall by appropriate regulation establish a practical system of identification of trout so offered for sale for table or other uses as directed by the Board.

E. It shall be unlawful to offer for sale, sell, offer to purchase, or purchase at any time or in any manner any species of game fish, or the carcass or any part thereof, except as specifically permitted by law and only by the means and within the numbers stated. A violation of the provisions of this subsection shall be punishable as provided in § 29.1-553.

F. A violation of the provisions of subsections A through D shall constitute a Class 2 misdemeanor.

(Code 1950, § 29-148; 1956, c. 490; 1958, c. 514; 1960, c. 126; 1962, c. 469; 1966, c. 413; 1987, c. 488; 1994, cc. 413, 848; 2000, cc. 403, 447.)

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### § 29.1-532. Dams and fishways.

Any dam or other object in a watercourse, which obstructs navigation or the passage of fish, shall be deemed a nuisance, unless it is used to work a mill, factory or other machine or engine useful to the public, and is allowed by law or order of court. Any person owning or having control of any dam or other obstruction in the streams of the Commonwealth which may interfere with the free passage of anadromous and other migratory fish, shall provide every such dam or other obstruction with a suitable fishway unless the Board considers it unnecessary. The purpose of such a fishway is for anadromous and other migratory fish to have free passage up and down the streams during March, April, May and June, and down the streams throughout the remaining months. "Suitable fishway" means a fishway which passes significant numbers of the target fishes, as determined by the Board.

Owners of such dams or other authorized obstructions shall maintain and keep fishways operational, in good repair, and restore them in case of destruction.

Owners of dams or other obstructions which are not authorized by law must have the obstacles removed at their expense when the Board determines that the obstacles interfere with the free passage of anadromous and other migratory fish within the streams of the Commonwealth.

The circuit court of the county or city in which the dam is situated, after reasonable notice to the parties or party interested and upon satisfactory proof of the failure to comply, may order any necessary construction or destruction to be initiated or put in good repair at the expense of the owner of the dam or other obstruction. All such construction or destruction must be initiated within one year of the court order and completed within three years of the court order.

Any person failing to comply with this section shall pay as a penalty a percentage of the estimated cost of construction or destruction equal to the percentage specified on the judgment rate of interest pursuant to § 6.1-330.54, and the Board shall provide construction or destruction cost estimates.

Penalties collected pursuant to this section shall be directed to the Department of Game and Inland Fisheries.

This section shall not apply to the Meherrin River within the Counties of Brunswick and Greenville, nor to the Meherrin River within or between the Counties of Lunenburg and Mecklenburg, nor to the Nottoway River between the Counties of Lunenburg and Nottoway, nor to Abram's Creek in Shawnee district, Frederick County, nor to the James River between the City of Lynchburg and the County of Amherst, nor to the James River within the City of Richmond and between the City of Richmond and Henrico County, except that the exemption for those dams west of Virginia Route 161 which are located on the James River within the City of Richmond and between the City of Richmond and Henrico County shall expire on January 1, 1990, nor any streams within the Counties of Augusta, Lunenburg, Mecklenburg, Louisa, Buckingham, Halifax, Montgomery, Pulaski, Franklin, Russell, Tazewell, Giles, Bland, Craig, Wythe, Carroll and Grayson, nor to that part of any stream that forms a part of the boundary of Halifax and Franklin Counties. Furthermore, no fish ladders shall be required on dams twenty feet or more in height. The City of Richmond shall continue to work with the Department of Game and Inland Fisheries toward implementing and funding a plan for breaching dams to provide fishways for the passage of anadromous and other migratory fish.

(Code 1950, § 29-151; 1950, p. 891; 1958, c. 607; 1987, c. 488; 1988, c. 487.)

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§ 29.1-566. Regulations.

The Board is authorized to adopt the federal list, as well as modifications and amendments thereto by regulations; to declare by regulation, after consideration of recommendations from the Director of the Department of Conservation and Recreation and from other reliable data sources, that species not appearing on the federal lists are endangered or threatened species in Virginia; and to prohibit by regulation the taking, transportation, processing, sale, or offer for sale within the Commonwealth of any threatened or endangered species of fish or wildlife.

(1972, c. 329, §§ 29-233, 29-234; 1977, c. 377; 1987, c. 488; 1989, c. 553.)

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**Routine Program Changes  
To  
Commonwealth of Virginia Coastal Management Program**

**Draft Request for Concurrence  
March 17, 2008**

Fisheries and Habitat of the Tidal Waters  
Code of Virginia Title 28.2, Chapter 2 - General Provisions

Submitted by:     The Commonwealth of Virginia  
                          Department of Environmental Quality  
                          Virginia Coastal Zone Management Program  
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## INTRODUCTION

The following constitutes a request by the Commonwealth of Virginia for the National Oceanic and Atmospheric Administration (NOAA) Office of Ocean and Coastal Resource Management (OCRM) to concur in a Routine Program Change to the Commonwealth of Virginia's Coastal Management Program (CMP).

The Commonwealth of Virginia has revised the Commonwealth's enforceable policies in Code of Virginia Title 28.2, Chapter 2. The enforceable policies contained in Title 28.2, Chapter 2 authorize the Marine Resources Commission (Commission) to promulgate rules and regulations; manage the state's marine, shell and finfish resources; and require and issue licenses for the taking of saltwater fishery resources.

In accordance with requirements for Routine Program changes as set forth in Coastal Zone Management Act (CZMA) 306(e), 15 C.F.R. §923.84, and the guidelines for Routine Program Changes contained in OCRM's Program Change Guidance from July 1996, the Commonwealth of Virginia has prepared the following analysis of the changes. The analysis: (A) explains why the proffered changes to the State CMP are Routine Program Changes and not Amendments as described in 15 C.F.R. §923.80(d); and (B) identifies the enforceable policies affected, describes the nature of each program change, and examines the impact the change has on the existing management program.

## ANALYSIS

The Commonwealth submits amendments to Title 28.2, Chapter 2 as a Routine Program Change. The statutory sections governing the Commission's authority to promulgate and enforce rules and regulations and establish licenses were approved as part of the CMP in 1986. This submission updates each of these provisions to reflect minor statutory changes to the program since that time.

### ***(A) Routine Program Change***

Pursuant to CZMA §306(e) and 15 C.F.R. §923.84, this analysis of the submitted change notifies OCRM of the Routine Program Change and explains why the program change will not result in an Amendment. Under 15 C.F.R. §923.80(d), amendments are defined as substantial changes in one or more of the five listed coastal management program areas:

- (1) uses subject to management;
- (2) special management areas;
- (3) boundaries;
- (4) authorities and organization; and
- (5) coordination, public involvement, and the national interest.

OCRM's Program Change guidance states that a substantial change is a high threshold based on a case-by-case determination. Such determination is made by reviewing

indicators of substantial change, such as whether new or revised enforceable policies address coastal uses or resources not previously managed, or make major changes in the way a state CMP manages coastal uses or resources. OCRM's Program Change guidance also states that an explanation why a proposed change will not result in an Amendment should describe the elements of the State CMP that are affected.

The sections submitted for this Routine Program Change are the provisions that specifically address the Commission's authority to promulgate and enforce regulations to 1) establish and regulate licenses it deems necessary to promote the seafood and marine resources of the state; 2) establish and prescribe penalties; and 3) promote and conserve seafood and marine resources. The statutory provisions being submitted are primarily a recodification giving new section numbers to the statutory provisions already approved by NOAA in the original CMP in 1986. At the time Virginia's CMP was approved, the Fisheries Management Program was located in Va. Code § 28.1-1 *et seq.* In 1992, Title 28.1 was recodified to Va. Code 28.2-100 *et seq.* The 1992 recodification subdivided some of the previous sections into separate subsections and also consolidated multiple sections into new sections.

The changes to these sections do not substantially affect the uses subject to management under the CMP, special management areas, boundaries, authorities and organization of the CMP, or coordination, public involvement, and national interest.

### ***(B) Effect of Changes on Program***

There have been minor changes in the language confirming the Commission's authority to promulgate rules and regulations. Changes to affected sections are identified in the attached table, which identifies the original program sections and changes in language; and the effects are further described here by section number and a brief legislative chronology.

The Commission's general rulemaking power (former § 28.1-9) was recodified to Section 28.2-103, and cross-referenced to Title 28.2, Chapter Two, including Section 28.2-201. Section 28.2-201 (replacing former Section 28.1-23), vests the Commission with authority to adopt regulations it determines to be necessary to promote the general welfare of the seafood industry and to conserve and promote the seafood and marine resources of the Commonwealth. The recodification simply replaces the language "shall have authority to make such regulations" with "may promulgate regulations," maintaining consistency with former § 28.1-23. Additional minor updates to Section 28.2-201 concern the Commission's authority to provide for tidal fisheries license and permit fees, and capping fee increases at three year intervals to \$5 or a graduated percentage rate of the Consumer Price Index. The Commission is required to place license money collected in the Marine Fishing Improvements Fund and Virginia Saltwater Recreational Development Fund. The specification of a Class 1 misdemeanor for violation of Commission regulations was omitted from this recodified section, as penalties are moved elsewhere in Title 28.2, including Section 28.2-225.

Section 28.2-202 (former Sections 28.1-9 and 28.1-16), affirms the Commission's power to investigate all matters affecting the seafood industry and to develop programs that enhance and improve commercial and sport fisheries. In addition, the Commissioner maintains the power to enforce marine fishery laws as provided in former Section 28.1-9. However, in the 1992 recodification, this authority was transferred to Title 28.2, Chapter 1- Section 28.2-104 which states that the "Commissioner shall [e]nforce the marine fishery and habitat laws and regulations." Accordingly, there is no change in the Commissioner's authority to enforce marine fishery laws. Rather, the authority has been transferred to new, separate chapters within Title 28.2.

Section 28.2-203 (former Section 28.1-23.1) vests the Commission with the duty to prepare fishery management plans. Substantively, Section 28.2-203 remains unchanged absent the omission of two explanatory opening paragraphs contained in former Section 28.1-23.1. However, these paragraphs are found under the policy section of the Fisheries Management Program in the CMP. Accordingly, this is considered a minor revision to the statute that does not affect the CMP. In 1995, Section 28.2-203.1 was enacted to establish the blue crab fishery management program. Because this amendment was prescribed in the existing CMP ("fisheries management plans for the oyster and blue crab will be developed in 1984-86)," this is considered a minor addition not exercising new authority or affecting additional areas and therefore not a substantial change.<sup>1</sup> Section 28.2-204 (former Section 28.1-23-2), authorizes the Commission to collect fishery statistics necessary to develop fishery management plans, rewording the authorization from "shall have the authority to collect" to "may collect" and renumbering the prior subsections.

Section 28.2-210 (former Section 28.1-25) states, with minor stylistic changes, the Commission's authority to adopt, in the case of an emergency, regulations for the immediate preservation of the seafood industry and marine life as in the original CMP.

In 1992, former Sections 28.1-47, 28.1-48, 28.1-59, and 28.1-64 were consolidated to form Section 28.2-225, minor updates to the program concerning the Commission's regulatory authority to establish penalties for statutory violations. These former Sections enumerated various types of prohibitions and corresponding penalties for fishing without a license. The newly consolidated Section 28.2-225 provides a single overarching prohibition on fishing without a license for greater ease and simplicity for a reader. Accordingly, this is considered a minor update and maintains consistency with former Title 28.1.

There have been minor updates to the program concerning the Commission's regulatory authority to issue fishing licenses. In 1992, Section 28.2-204.1 was enacted granting the Commission the authority to limit the number of gear licenses and permits based on factors relating to economic and social consequences, food production, dependence on fishery, efficiency of gear, impact on fisheries, and abundance of the resource. This change maintains consistency with former Title 28.1 which from its inception recognized

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<sup>1</sup> See Virginia Coastal Resources Management Program, Final Environmental Impact Statement p. III-3. 1985.

the Commission's authority to establish licenses and limit the number of such licenses and permits. In 1993, Section 28.2-226.1 was enacted requiring any person fishing for recreational purposes using commercial gear to obtain a non-transferable license. All license holders of this type are required to report catch data to the Commission for effective fisheries management. The definition of "recreational purposes" was included in the Section. Also in 1993, Section 28.2-226.2 was enacted. It authorizes the Commission to establish requirements, subject to size and fee limitations, for commercial gear licenses. These amendments maintain consistency with the authority vested in the Commission under the CMP to establish and enforce licenses relating to commercial and recreational fishing and thus amount to minor changes in the existing CMP.

Section 28.2-227 (former Section 28.1-47.1) was amended in 1993 to include a graduated fee scale for nonresident harvester's fishing licenses: the \$350 fee was replaced with the following graduated fee scale: "no less than \$350 and no more than \$1,150." The revised section omitted the fee restriction requiring nonresidents to pay no less than a Virginia resident, and designated fees collected to the Virginia Marine Products Fund. These changes maintain consistency with the Commission's authority under the existing CMP. The Fisheries Management Program under the CMP (as provided in former Section 28.1-47.1) previously established the Commission's authority to regulate nonresident harvester's fees.

Section 28.2-228 (former Section 28.1-119.1) covers licenses for direct purchases from catchers. It was modified in 1992 to add subsection numbers and eliminate an unnecessary cross-reference. In 1996, Section 28.2-228.1 was enacted to supplement this, giving the Commission the authority, by regulation, to establish licenses for the landing of seafood in Virginia. The regulations may limit the number of licenses that may be issued and may grant exceptions to registered commercial fishermen. These changes maintain consistency with the CMP which from its inception vested the Commission with the power to "make such regulations... it deems necessary to promote the seafood and marine resources of the state, including regulations as to the taking of seafood,"<sup>2</sup> and are therefore not a substantial change to the CMP.

Sections 28.1-21 and 28.1-70 were consolidated in 1992 to form Section 28.2-229, which consolidates the Commission's authority to issue fishing licenses. License validation dates were included to clarify the start and finish dates of annual licenses. Also, license holders were prohibited from receiving a refund on already purchased licenses when the season is closed for conservation purposes or due to natural conditions, or when a license has been suspended or revoked. These amendments maintain consistency with the existing CMP and clarify prior language pertaining to refunds and license validation dates.

In 1992, the Commission's authority to establish and enforce penalties for statutory violations was divided among several sections, but remains consistent with the original CMP. Section 28.2-230 addresses penalties for violating Commission regulations relating

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<sup>2</sup> See Virginia Coastal Resources Management Program, Final Environmental Impact Statement p. III-2. 1985.

to fishing licenses. In 1992, Section 28.2-230 replaced language of former Section 28.1-64 and used the term Class 1 misdemeanor, rather than “misdemeanor” as the penalty for making a materially false statement when applying for a license or altering or changing such license, in order to reflect Virginia’s penalty classification scheme.

Section 28.2-232 (former Section 28.1-36) was amended in 1989 to clarify the timing of a license revocation hearing. While former Section 28.1-36 previously required a hearing, the amendments in Section 28.2-232 clarify that such hearing must be held *before* the Commission decides to prevent the issuance, reissuance or renewal or any license. Therefore, the amendments elucidate the terms and duration of revocation and do not amount to a substantial change.

Section 28.2-241 was enacted in 1992 to ensure that commercial fishermen registered with the Commission. The General Assembly included a definition of “commercial fisherman,” a penalty for provision violators, registration fees, expiration dates, and exemptions within the Section. In 1992, Section 28.2-243 was enacted requiring the Commission to promulgate regulations governing the registration of commercial fishermen. Because the Commission possesses regulatory authority under the approved CMP to promulgate regulations concerning commercial fishing (under former Sections 28.1-23 and 28.1-23.1), this amendment maintains consistency with the uses subject to management and authority vested in the Commission under the CMP and is not a substantial change.

### ***Chronology of Changes***

1989 Changes: The legislature clarified the duration and terms of license revocations and the timing of licensing hearings.

1991 Changes: The legislature earmarked a portion of all license fees for the Virginia Marine Products Fund and Marine Fishing Improvement Fund.

1992 Changes: Title 28.1 was recodified to Va. Code 28.2-100 *et seq.* The 1992 recodification reorganized the previous sections and consolidated others. At the same time, the legislature enacted Sections 28.2-203.1, 28.2-204.1, 28.2-241, and 28.2-243. Legislation clarified fishing prohibitions, licenses, and expiration dates. The legislature reorganized the penalty provisions and changed the penalty for making false statements or altering a license from a simple misdemeanor to a Class 1 misdemeanor.

1993: The legislature modified the license fee scheme from a fixed fee to a graduated fee scheme. The legislature enacted Sections 28.2-226.1 and 28.2-226.2 to require recreational fishermen to obtain a commercial gear license in specific instances and report catch data to the Commission.

1994: The legislature omitted a fee provision that nonresidents pay no less than residents of Virginia.

1995 Changes: The legislature enacted Section 28.2-203.1 to establish the blue crab fishery management program and to submit annual progress reports to the Governor. The legislature also enacted Section 28.2-204 granting authority to the Commission to issue gear licenses and promulgate regulations pursuant to the provisions of the section. The legislature moved penalties to elsewhere in Title 28.2, including 28.2-225.

1996 Changes: The legislature enacted Section 28.2-228.1 confirming the Commission's authority to promulgate regulations to establish licenses for the landing of seafood.

1998 Changes: The legislature authorized the Commission to issue gear licenses or permits to any person residing on an island at least three miles from the mainland for at least five years.

2004 Changes: The legislature made a number of changes relating to fishing license fees. The legislature added a cap for permit fee increases at three year intervals. All money collected from the fee increase will be distributed to the Marine Fishing Improvement Fund and the Virginia Saltwater Recreational Fishing Development Fund.

2006 Changes: The legislature assented to the Federal Aid in Sport Fish Restoration Act and provided the Commission the authority to establish fish restoration and management projects under the Act.

## **Conclusion**

The proposed changes do not substantially affect the uses subject to management under the CMP, special management areas, boundaries, authorities and organization, or coordination, public involvement and national interest. Virginia requests concurrence in this Routine Program Change.

## Title 28.2 Fisheries and Habitat of Tidal Waters

Statutory Change	Status of Law in 1986	Change to Law Since 1986	Significance of Change
§ 28.2-103. General powers of Commission; promulgation of regulations.	Part of the original CMP approval [was § 28.1-16].	<ul style="list-style-type: none"> <li>Recodified regulatory authority to this section, with cross-references to Chapter Two regulations (1992, c. 836).</li> <li>Cross-references (1997, c. 845).</li> </ul>	<ul style="list-style-type: none"> <li>Not a substantial change.</li> </ul>
§ 28.2-104. Commissioner; general powers and duties	Part of the original CMP approval [was § 28.1-9].	<ul style="list-style-type: none"> <li>Recodified enforcement duties to this section (1992, c. 836).</li> </ul>	<ul style="list-style-type: none"> <li>Not a substantial change.</li> </ul>
§ 28.2-201 Authority of Commission to make regulations, establish licenses, and prepare fishery management plans; accept federal grants; enforcement; penalty for violations of regulation	Part of the original CMP approval [was § 28.1-23]	<ul style="list-style-type: none"> <li>Changed wording of “shall have authority” to make regulations...it deems necessary,” to “may promulgate regulations...necessary” (1992, c. 836).</li> <li>Changed “inspector” to “agency” (1990, c. 445) (1992, c. 836).</li> <li>Changed Class 1 misdemeanor penalty (1992, c. 836).</li> <li>Changed requirement that penalties are the same for violation of a regulation and violation of the specific statute under which the regulation has been promulgated (1995, c. 136).</li> <li>Added permit fees for listed permit types and for their administrative transfer among fishermen (2004, c. 860).</li> <li>Added fee scheme to increase fees for fisheries licenses and permits every three years. The Commission is required to equitably distribute the amounts generated from the fee increases to the Marine Fishing Improvement Fund and the Virginia</li> </ul>	<ul style="list-style-type: none"> <li>Not a substantial change. Under the existing Fisheries Management Program, the Commission retains same authority to promulgate regulations it deems necessary “to promote the seafood and marine resources of the State.”</li> <li>Not a substantial change. The change is a minor change effected to deter regulatory violations.</li> <li>Does not substantially change uses subject to management, special management areas or authorities and organization under the CMP. Under the existing fisheries management program, the addition of permit fees is uniform with the implementation of license fees as provided in former § 28.1-23.</li> <li>Does not substantially change uses subject to management or authorities subject to management under the CMP.</li> </ul>

## Title 28.2 Fisheries and Habitat of Tidal Waters

		<p>Saltwater Recreational Fishing Development Fund (2004, c. 860).</p> <ul style="list-style-type: none"> <li>Added provision recognizing the Commonwealth's assent to the Federal Aid in Sport Fish Restoration Act. The Commission is given the authority to establish and implement fish restoration and management projects under the Act (2006, c. 5).</li> </ul>	<p>The Funds assist the Commission manage and improve marine fisheries.</p> <ul style="list-style-type: none"> <li>Does not substantially change uses subject to management or authorities and organization under the CMP. Under the existing fisheries management program, fishery management plans "shall have as a goal the preservation of the Commonwealth's exclusive right to manage the fisheries within its territorial jurisdiction." <i>See</i> Final EIS at III-2.</li> </ul>
§ 28.2-202 Commissioner; fishery powers	Part of the original CMP approval [was §§ 28.1-9, 28.1-16].	<ul style="list-style-type: none"> <li>No change in this Section which defined the Commissioner's powers under the Fisheries Management Program except minor stylistic changes. Also, the Commissioner's authority, formerly found under § 28.1-9, to enforce all fish and seafood laws, is now found at § 28.2-102 (1992, c. 836).</li> </ul>	<ul style="list-style-type: none"> <li>Does not substantially change uses subject to management or authorities and organization under the CMP. The Commissioner's authority to enforce fish and seafood laws is found under § 28.2-102.</li> </ul>
§ 28.2-203 Commission to prepare fishery management plans; standards	Part of the original CMP approval [was § 28.1-23.1].	<ul style="list-style-type: none"> <li>Omitted general fishery management goals and policy (1992, c. 836).</li> <li>Substituted "corporation or other entity" with "person" (1992, c. 836).</li> </ul>	<ul style="list-style-type: none"> <li>Does not substantially change uses subject to management or authorities and organization under the CMP. The 1986 Final EIS for Virginia at III-2 stated the goal and policies of fisheries management. Although this provision was omitted in the 1992 recodification, it is implicit throughout Title 28.2.</li> </ul>



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§ 28.2-203.1 Blue crab fishery management program	Enacted in 1995, c. 356.	<ul style="list-style-type: none"> <li>Added general blue crab fishery management plan requirements and required actions to protect and enhance crab habitat and nursery areas such as the protection of water quality conditions and a review of current and proposed regulations relating to blue crab fisheries.</li> <li>Required Commission to produce annual progress reports to the Governor.</li> </ul>	<ul style="list-style-type: none"> <li>Does not substantially change uses subject to management, special management areas, or authorities and organization under the CMP. The 1986 Final EIS for Virginia at III-3 authorizes the Commission to prepare and develop a blue crab fishery management plan. Also, the plan builds upon the already existing plans adopted by the Chesapeake Bay Program and are consistent with standards set forth in § 28.2-203.</li> <li>Does not substantially change uses subject to management or authorities and organization under the CMP. The Governor, pursuant to the CMP “has oversight responsibilities... for the Marine Resources Commission.” <i>See</i> Final EIS at III-2.</li> </ul>
§ 28.2-204 Authority to collect fisheries statistics	Part of original CMP approval [was § 28.1-23.2].	<ul style="list-style-type: none"> <li>Changed the Commission’s mandate to collect fisheries statistics from “shall have the authority to collect” to “may collect” (1992, c. 836).</li> <li>Minor stylistic changes.</li> </ul>	<ul style="list-style-type: none"> <li>Does not substantially change uses subject to management or authorities and organization under the CMP. Maintains consistency with former § 28.1-23.2 which authorized the Commission to collect fishery statistics for the same objectives.</li> </ul>
§ 28.2-204.1 Limited sale of gear licenses and permits; regulations	Enacted in 1992, c. 836.	<ul style="list-style-type: none"> <li>Authorized the Commission to limit the number of gear licenses or permits to fish and authorized the Commission to promulgate regulations which limit permit</li> </ul>	<ul style="list-style-type: none"> <li>Does not substantially change uses subject to management, special management areas or authorities and organization under the CMP. The CMP</li> </ul>

## Title 28.2 Fisheries and Habitat of Tidal Waters

		<p>and license number and promulgate regulations to implement the section.</p> <ul style="list-style-type: none"> <li>Authorized the Commission to issue gear licenses or permits (notwithstanding such limits) to any person who resided on an island at least three miles from the mainland for at least five years. (1998, c. 114)</li> </ul>	<p>vests the Commission with the authority to issue licenses and promulgate regulations to promote and preserve the seafood and marine resources of the State.</p>
§ 28.2-210 Adoption of emergency regulations	Part of the original CMP approval [was § 28.1-25].	<ul style="list-style-type: none"> <li>Substituted the word “organisms” for “animals.” Minor stylistic changes in sentence structure.</li> <li>Cross-reference to publication requirement changed to § 28.2-209 (former § 28.1-24)</li> </ul>	<ul style="list-style-type: none"> <li>Does not substantially change uses subject to management or authorities and organization under the CMP.</li> </ul>
§ 28.2-225 Fishing license required; penalty	Part of the original CMP approval [was §§ 28.1-47, 28.1-48, 28.1-59, 28.1-64].	<ul style="list-style-type: none"> <li>Recodified and consolidated §§ 28.1-47, 28.1-48, 28.1-59, and 28.1-64 to create a unified overarching prohibition to fish tidal waters of the Commonwealth without a license (1988, c. 710; 1990, c. 445; 1992, cc. 493, 503, 836, 895).</li> </ul>	<ul style="list-style-type: none"> <li>Does not substantially change uses subject to management or authorities and organization under the CMP, but provides simplified license procedures to meet uses that are already part of the CMP.</li> </ul>
§ 28.2-226.1 Recreational gear license required	Enacted in 1993, c.219.	<ul style="list-style-type: none"> <li>Required all recreational fishermen using commercial gear authorized under § 28.2-226.2, or exempted in § 28.2-226, or included in § 28.2-302.1 to obtain a commercial gear license for recreational purposes.</li> <li>Defined “recreational purposes”</li> <li>Required holders of a license to report catch and data to the Commission.</li> </ul>	<ul style="list-style-type: none"> <li>Does not substantially change uses or authorities subject to management under the CMP as the Commission already possesses the authority to establish licenses with the goal to conserve and enhance finfish and shellfish resources.</li> </ul>
§ 28.2-226.2 Commission to establish requirements for commercial gear	Enacted in 1993, c. 219.	<ul style="list-style-type: none"> <li>Authorized the Commission to establish the type and amount of gear which can be used for taking finfish and shellfish for</li> </ul>	<ul style="list-style-type: none"> <li>Does not substantially change uses subject to management or authorities and organization under the CMP. The</li> </ul>

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licenses used for recreational purposes		recreational purposes, and set limits on license fees.	CMP previously authorizes the Commission to establish licenses with the goal to conserve and enhance finfish and shellfish resources.
§ 28.2-227 Special nonresident harvester's license; fee and oath; revocation; penalty	Part of the original CMP approval [was § 28.1-47.1].	<ul style="list-style-type: none"> <li>• Substituted “officer” for term “inspector” (1991, c. 411).</li> <li>• Modified nonharvesters license fee to range from no less than \$350 to no more than \$1,150 (1993, c. 245).</li> <li>• Earmarked a portion of license fees to go to Virginia Marine Products Fund and Marine Fishing Improvement Fund (1991, c. 411).</li> <li>• Moved time period of license validation to § 28.2-229.</li> <li>• Omitted fee restriction requiring nonresidents to pay no less than the price Virginia residents would pay for a license to engage in like fishing activities (1994, c. 155).</li> </ul>	<ul style="list-style-type: none"> <li>• Does not substantially change uses subject to management or authorities and organization under the CMP. Term change amounts to technical change.</li> <li>• Does not substantially change uses or authority subject to management under the CMP, but provides updated licensing fee range to reflect changes in economic conditions since 1986 when the CMP was approved.</li> <li>• The allocated money earmarked for the respective Funds will aid in the Commission's regulation of existing uses under the CMP.</li> <li>• Time period of license validation was previously included in § 28.1-47, incorporated in CMP in 1986.</li> <li>• Does not substantially change uses or authorities subject to management under the CMP.</li> </ul>
§ 28.2-228. License for purchase of fish, shellfish, or marine organisms from the catcher; fee	Part of the original CMP approval [was § 28.1-119.1].	<ul style="list-style-type: none"> <li>• License and fee for direct purchasers. Amendment added “eels or other seafood” (1988, c. 27).</li> <li>• Recodification added subsections, and left “or other seafood” in place of “eels or” and</li> </ul>	<ul style="list-style-type: none"> <li>• Does not substantially change uses subject to management, or authorities under the CMP. Applies to same activities as original CMP.</li> </ul>

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		dropped cross-reference to reporting requirement for oyster purchases contained in another section (1992, c. 836)	
§ 28.2-228.1 Seafood landing licenses	Enacted 1996, c. 214.	<ul style="list-style-type: none"> <li>Authorized the Commission to promulgate regulations establishing licenses and exceptions to the license for the landing of seafood in Virginia.</li> <li>Specified actions constituting Class 3 misdemeanors.</li> </ul>	<ul style="list-style-type: none"> <li>Does not substantially change uses subject to management, special management areas or authorities and organization under the CMP. The Commission possesses authority under the CMP to promulgate regulations and establish licenses to promote the seafood resources of Virginia. <i>See</i> Final EIS at III-2.</li> </ul>
§ 28.2-229 When licenses terminate; proration and refund not permitted	Part of the original CMP approval [was §§ 28.1-21, 28.1-70].	<ul style="list-style-type: none"> <li>Inserted language formerly contained in § 28.1-21 and included specific dates of validation and expiration (1992, c. 836).</li> <li>Inserted language formerly contained in § 28.1-70 concerning refunds during closed seasons and added refund prohibitions when fishing effort is reduced or when the season is closed to promote conservation of fisheries or due to natural conditions. Refunds are prohibited, as well, when a license is suspended or revoked (1992, c. 836).</li> </ul>	<ul style="list-style-type: none"> <li>Not a substantial change. The amendments clarify overly broad language contained in Title 28.1, §§ 28.1-21 and 28.1-70 and qualify when refunds are prohibited.</li> </ul>
§ 28.2-230 Penalty for false statements or altering a fishing license; penalty	Part of the original CMP approval [was § 28.1-64].	<ul style="list-style-type: none"> <li>Inserted language formerly contained in § 28.1-64 and added the words “Class 1” before the word “misdemeanor in defining the penalty for making false statements or altering a license (1992, c. 836).</li> <li>Narrowed type of violations included in the</li> </ul>	<ul style="list-style-type: none"> <li>Does not substantially change uses subject to management or authorities and organization under the CMP. This provision is uniform with language supplanted from § 28.1-64 governing the same issues.</li> </ul>

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		Section, because other license violations now covered at § 28.2-225 (1992, c. 836).	<ul style="list-style-type: none"> <li>Does not substantially change uses or authority subject to management under the CMP.</li> </ul>
§ 28.2-232 Revocation of licenses	Part of the original CMP approval [was § 28.1-36].	<ul style="list-style-type: none"> <li>Amended language to clarify that a hearing must be held <i>before</i> the Commission decides to prevent the issuance, reissuance or renewal or any licenses (1989, c. 2).</li> <li>Clarified the duration and terms of license revocation (1989, c. 2).</li> </ul>	<ul style="list-style-type: none"> <li>Not a substantial change. Maintains consistency with the hearing and notice requirements found under former § 28.1-36.</li> <li>Not a substantial change. The amended language places a two year limit on license revocation and provides detailed indicators for the Commission to review in its hearing. This maintains consistency with the hearing requirement in former § 28.1-36 and does not substantially change uses or authority subject to management under the CMP, special management areas, authorities and organization, coordination, public involvement and national interest. .</li> </ul>
§ 28.2-241 Registration of commercial fisherman required; exemption; penalty	Enacted 1992, cc. 493, 503.	<ul style="list-style-type: none"> <li>Added registration requirements for commercial fishermen, and defined “commercial fisherman.” Restricted licenses to commercial fisherman with valid registration.</li> <li>Listed fees and due dates for the registration of commercial fishermen.</li> <li>Restricted registration transfer.</li> <li>Authorized \$500 civil penalty for violation of the section.</li> </ul>	<ul style="list-style-type: none"> <li>Does not substantially change uses subject to management, special management areas or authorities and organization under the CMP. The CMP already addressed the Commission’s regulatory authority over commercial fishing. Registration of commercial fishermen and clarification of what a commercial fisherman is assists the Commission to preserve and promote</li> </ul>

## Title 28.2 Fisheries and Habitat of Tidal Waters

			the seafood and marine resources of the State.
§ 28.2-243 Commission to promulgate regulations	Enacted 1992, cc. 493, 503.	<ul style="list-style-type: none"><li>• Authorized the Commission to promulgate regulations governing the registration of commercial fisherman.</li></ul>	<ul style="list-style-type: none"><li>• Does not substantially change uses subject to management, special management areas or authorities and organization under the CMP. The CMP vests the Commission with the authority to promulgate regulations that to preserve and promote both commercial and recreational fisheries.</li></ul>

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§ 28.2-103. General powers of Commission; promulgation of regulations.

The Commission shall exercise all of the powers herein conferred and may promulgate regulations and guidelines necessary to carry out the provisions of this title. Marine fisheries regulations shall be promulgated according to the procedures established in Article 2 (§ 28.2-209 et seq.) of Chapter 2 of this title. Habitat management regulations and guidelines shall be promulgated in accordance with the procedures established in Article 2 (§ 28.2-209 et seq.) of Chapter 2 of this title, unless specifically provided in subdivision A 9 or A 12 of § 2.2-4006 or subsection C of § 2.2-4011.

(Code 1950, § 28-16; 1962, c. 406, § 28.1-9; 1972, c. 711, § 62.1-13.4; 1973, c. 148; 1982, c. 300; 1990, c. 811; 1992, c. 836; 1997, c. 845.)

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§ 28.2-104. Commissioner; general powers and duties.

The Commissioner shall:

1. Enforce the marine fishery and habitat laws and regulations;
2. Serve as chief executive officer of the Commission and devote full time to the duties of the office;
3. Appoint all personnel; and
4. Establish and equip a permanent office in the City of Newport News.

(Code 1950, §§ 28-11, 28-16, 28-18, 28-19, 28-20; 1952, c. 177; 1962, c. 406, §§ 28.1-4, 28.1-9, 28.1-11, 28.1-12, 28.1-13, 28.1-23; 1968, c. 749; 1973, c. 148; 1983, c. 318; 1984, c. 463; 1992, c. 836.)

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§ 28.2-201. Authority of Commission to make regulations, establish licenses, and prepare fishery management plans; accept federal grants; enforcement; penalty for violation of regulation.

The Commission may:

1. Promulgate regulations, including those for taking seafood, necessary to promote the general welfare of the seafood industry and to conserve and promote the seafood and marine resources of the Commonwealth. The Commission may also promulgate regulations necessary for the conservation and reasonable use of surf clams.
2. Establish new licenses and fees commensurate with other licenses in an amount not to exceed \$100 for any device used for taking or catching seafood in the tidal waters of the Commonwealth when the device (i) is not otherwise licensed in this title and (ii) is used for commercial purposes. The Commission may specify, when issuing such licenses, any restrictions or control over the devices or the persons operating the device.
3. Establish fees for permits required for delayed or limited entry fisheries, shellfish relaying, scientific collections, and for the administrative transfer of these permits among fisherman, where applicable.
4. Beginning July 1, 2004, and not more frequently than every three years thereafter, increase fees for tidal fisheries licenses and permits that are authorized under this title or by regulation promulgated pursuant to Article 2 (§ 28.2-209 et seq.) of this chapter. Any fee increase for such licenses and permits shall be capped at \$5 or a percentage equal to the increase in the Consumer Price Index calculated from the time the fee was last set or adjusted, whichever is greater. Beginning July 1, 2004, any amounts generated from the increases in commercial fishing licenses and permits shall be paid into the Marine Fishing Improvement Fund for the purposes authorized by § 28.2-208, and any amounts generated from the increases in recreational fishing licenses shall be paid into the Virginia Saltwater Recreational Fishing Development Fund for the purposes authorized by § 28.2-302.3.
5. The Commission shall ensure that increases in licenses and fees are equitably distributed among resource user groups.
6. Prepare fishery management plans containing evaluations of regulatory management options, based upon scientific, economic, biological, and sociological information, and use them in the development of regulations. The Commissioner may appoint a fisheries advisory committee and its chairman, consisting of representatives of the various fishery user groups, to assist in the preparation and implementation of the fishery management plans. The Commission may expend funds to compensate the members of the committee pursuant to § 2.2-2825.
7. Provide for enforcement of any regulation governing surf clams by any law-enforcement officer of any agency of the Commonwealth or its political subdivisions or by any law-enforcement officer of any agency of the federal government. Enforcement agreements with other agencies or political subdivisions shall be stated in the regulation.
8. The Commonwealth hereby assents to the provisions of the Federal Aid in Sport Fish Restoration Act of August 9, 1950 (16 U.S.C. §§ 777-777k), as amended. The Commission is authorized to perform all such acts as may be necessary for the establishment and implementation of cooperative fish restoration and management projects as defined by these federal statutes and the implementing regulations promulgated thereunder.

(Code 1950, § 28-43; 1960, c. 517; 1962, c. 406, §§ 28.1-23, 28.1-48; 1966, c. 684; 1968, cc. 748, 749; 1972, c. 833; 1973, cc. 21, 411, § 28.1-120.1; 1976, c. 392; 1979, c. 274; 1981, c. 61; 1983, cc. 307, 318; 1984, c. 463; 1990, c. 445; 1992, c. 836; 1995, c. 136; 2004, c. 860; 2006, c. 5.)

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§ 28.2-202. Commissioner; fishery powers.

The Commissioner may:

1. Investigate all matters affecting the seafood industry; and
2. Provide for the development of programs designed to enhance and improve commercial and sport fisheries in Virginia's tidal waters.

(Code 1950, §§ 28-16, 28-23; 1962, c. 406, §§ 28.1-9, 28.1-16; 1973, c. 148; 1992, c. 836.)

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§ 28.2-203. Commission to prepare fishery management plans; standards.

The Commission shall prepare and implement fishery management plans so as to preserve the Commonwealth's exclusive right to manage the fisheries within its territorial jurisdiction.

Any fishery management plan prepared, and any regulation promulgated to implement the plan, shall be consistent with the following standards for fishery conservation and management:

1. Conservation and management measures shall prevent overfishing while achieving the optimum yield from each fishery. The "optimum yield" of a fishery means the amount of fish or shellfish which will provide the greatest overall benefit to the Commonwealth, with particular reference to commercial fishing for food production and to recreational fishing;
2. Conservation and management measures shall be based upon the best scientific, economic, biological and sociological information available;
3. To the extent practicable, an individual stock of fish shall be managed as a unit throughout the territorial waters of the Commonwealth, and interrelated stocks of fish shall be managed as a unit or in close coordination;
4. Conservation and management measures shall not discriminate among user groups. If it becomes necessary to allocate or assign fishing privileges among various user groups, such allocation shall be (i) fair and equitable to all fishermen; (ii) reasonably calculated to promote conservation; and (iii) carried out in such manner that no person acquires an excessive share of such privileges;
5. Conservation and management shall, where practicable, promote efficiency in the utilization of fishery resources, except that no such measure shall have economic allocation as its sole purpose;
6. Conservation and management measures shall take into account variations among, and contingencies in, fisheries, fishery resources, and catches;
7. Conservation and management measures shall, where practicable, minimize regulatory burdens which inhibit innovation, expansion, and normal business operations.

(1984, c. 463, § 28.1-23.1; 1992, c. 836.)

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§ 28.2-203.1. Blue crab fishery management plan.

A. The Commission shall prepare, in consultation with the Virginia Institute of Marine Science, other educational institutions and representatives of industry and interested parties, and then implement a blue crab fishery management plan. The plan shall build upon previously developed plans, including consideration of plans adopted by the multi-state Chesapeake Bay Program, and shall be consistent with the standards for fishery conservation and management set out in § 28.2-203. The plan shall be designed to reverse any fishing practices, environmental stress and habitat deterioration negatively impacting the short and long term viability and sustainability of the crab stock in Virginia waters. The Commission shall consider the economic impact to Virginia of proposed legislative and regulatory changes. The protection of spawning stock, nursery areas and habitat shall be of prime consideration in the plan. At a minimum the plan shall include, but not be limited to:

1. Measures to protect and enhance crab habitat and nursery areas.
2. Suggested measures to assure water quality conditions necessary for blue crab survival and reproduction, including identification of areas where water quality is such that onshore mechanisms for water quality protection are needed to protect and restore crab populations and habitat areas.
3. A review of current and proposed regulations and restrictions relating to: (i) winter dredging; (ii) commercial licensing; (iii) spawning stock; (iv) nursing sanctuaries; (v) submerged aquatic vegetation; (vi) peeler and soft shell crabs; (vii) size limits; (viii) the use of cull rings and the use of crab pots; and (ix) time of day restrictions and closed seasons.
4. Recommended legislative changes if necessary to implement the plan.

B. The Commission shall, on or before December 1 of each year, report to the Governor and the General Assembly on the progress and implementation of the blue crab fisheries management plan.

(1995, c. 356.)

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§ 28.2-204. Authority to collect fisheries statistics.

A. The Commission may collect from any source any fisheries data and information necessary to develop fishery management plans and to evaluate management options. This information shall include, but not be limited to:

1. Statistics for catch and fishing efforts by species from commercial and recreational fishermen;
2. Statistics from fish processors and dealers;
3. Types of gear and equipment used;
4. Areas in which fishing has been conducted;
5. Landing places; and
6. The estimated capacity of fish processing facilities and the actual amount of fish processed at these facilities.

B. The Commission may enter into cooperative agreements with any other entity for the collection of statistics.

C. The information collected or reported shall not be disclosed in any manner which would permit identification of any person, firm, corporation or vessel, except when required by court order. The Commission may prescribe the form and manner in which this information is reported.

(1986, c. 273, § 28.1-23.2; 1992, c. 836.)

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§ 28.2-204.1. Limited sale of gear licenses and permits; regulations.

A. The Commission may limit the number of gear licenses or permits to fish, except those licenses issued pursuant to § 28.2-402, issued for use in a specific fishery. The Commission may, despite any such limits, issue such gear licenses or permits to fish to any person who has resided for at least five years on an island in the Commonwealth that is at least three miles from the mainland.

B. The Commission is authorized to promulgate regulations to carry out the provisions of this section. In determining whether to limit the sale of gear licenses or permits to fish, and determining who receives licenses, the Commission shall consider all factors relevant to the Commonwealth's fishery management policy, including but not limited to:

1. Economic and social consequences;
2. Food production;
3. Dependence on the fishery by licensees;
4. Efficiency of gear used in the fishery;
5. Impact on species and fisheries; and
6. Abundance of the resource.

(1992, cc. 492, 504; 1998, c. 114.)

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§ 28.2-210. Adoption of emergency regulations.

If, in an emergency, the adoption of a regulation is necessary for the immediate preservation of the public peace, health, safety, and welfare, or the protection of the seafood industry, natural resources or marine organisms, the Commission may promulgate the necessary regulation. The regulation shall be published and filed as prescribed in § 28.2-209. No regulation adopted as an emergency regulation shall remain in effect longer than thirty days unless a public hearing is held as required in § 28.2-211 after being advertised as prescribed in § 28.2-209.

(1962, c. 406, § 28.1-25; 1992, c. 836.)

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§ 28.2-225. Fishing license required; penalty.

It shall be unlawful to fish in the tidal waters of the Commonwealth or those waters under the joint jurisdiction of the Commonwealth without first obtaining the required license, subject to the exemptions set out in § 28.2-226.

Any person who violates this section is guilty of a Class 1 misdemeanor.

(Code 1950, §§ 28-42, 28-43, 28-61, 28-66; 1960, c. 517; 1962, c. 406, §§ 28.1-47, 28.1-48, 28.1-59, 28.1-64; 1966, cc. 684, 695; 1968, c. 748; 1972, c. 833; 1973, c. 21; 1974, c. 313; 1976, c. 392; 1978, cc. 347, 358; 1979, c. 274; 1980, c. 605; 1981, cc. 61, 525; 1982, c. 461; 1983, c. 307; 1988, c. 710; 1990, c. 445; 1992, cc. 493, 503, 836, 895.)

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§ 28.2-226.1. Recreational gear license required.

A. Any person desiring to take or catch finfish or shellfish for recreational purposes in the tidal waters of the Commonwealth using commercial gear authorized under § 28.2-226.2, and for which an exemption is not provided in § 28.2-226, or included in § 28.2-302.1, shall first obtain the appropriate commercial gear license for recreational purposes. A license to use such gear for recreational purposes shall be issued to an individual for his exclusive use and shall not be transferable.

B. All gear licenses issued for recreational purposes shall be so marked.

C. Any person who has obtained a commercial gear license for recreational purposes only shall be exempt from the commercial fishing registration requirements of §§ 28.2-241 and 28.2-242.

D. For purposes of this section and § 28.2-226.2, "recreational purposes" means finfish or shellfish taken for personal use and not sold, traded, bartered or given to another in order to be sold, traded or bartered.

E. Holders of licenses under this section shall report catch and other data as is deemed necessary by the Commission for effective fisheries management.

(1993, c. 219; 2005, c. 124.)

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§ 28.2-226.2. Commission to establish requirements for commercial gear licenses used for recreational purposes.

- A. The Commission is authorized to establish the type and amount of commercial gear which can be used for taking finfish and shellfish for recreational purposes. The license fees for use of recreational gear shall be the same as fees charged for the particular gear when used commercially.
- B. The Commission shall not issue to any licensee a recreational gear license which exceeds the following limitations:
1. One gill net up to 300 feet in length, \$7.50;
  2. Up to 10 crab pots, \$29;
  3. One crab trap or crab pound, \$5;
  4. One crab scrape, \$16; or
  5. Two eel pots, \$10.
- C. All fees collected pursuant to this section shall be deposited in the state treasury and credited to the Virginia Marine Products Fund as established under § 3.1-684.63.

(1993, c. 219; 2001, c. 28.)

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§ 28.2-227. Special nonresident harvester's license; fee and oath; revocation; penalty.

- A. Any nonresident desiring to take or catch marine fish, crabs or any other seafood, except oysters, clams or other mollusks, from the tidal waters of the Commonwealth for which a license is required shall pay to any officer or agent a fee for a nonresident harvester's license. The fee, to be established by the Commission, shall be no less than \$350 or more than \$1,150. Three hundred fifty dollars of each fee shall be credited to the Virginia Marine Products Fund as provided under § 3.1-684.63. The remainder of the fee shall be credited to the Marine Fishing Improvement Fund, as established pursuant to § 28.2-208.
- B. The license shall be required of each boat used in Virginia's tidal waters and shall be in addition to any other licenses required for the activity involved.
- C. The nonresident shall state under oath his true name and address, the name and number of the boat being licensed, and that he will not violate any of the laws of this Commonwealth governing the taking and catching of seafood.
- D. A nonresident harvester's license shall be required prior to the purchase of any other license for the harvesting of seafood. Revocation of this license in accordance with § 28.2-232 shall constitute revocation of any other license held by the nonresident under the provisions of this subtitle.
- E. Any Virginia resident who enters into a partnership or other agreement with the intent to defeat the object of this section is guilty of a Class 1 misdemeanor.

(1983, c. 299, § 28.1-47.1; 1991, c. 411; 1992, c. 836; 1993, c. 245; 1994, c. 155.)

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§ 28.2-228. License for purchase of fish, shellfish, or marine organisms from the catcher; fee.

A. Any person, purchasing from the catcher, oysters or clams caught from the public grounds of the Commonwealth or the Potomac River, or crabs, fish, or other seafood caught from the waters of the Commonwealth or the Potomac River, shall pay a license fee of (i) fifty dollars for each place of business and (ii) twenty-five dollars for each boat or motor vehicle used for buying.

B. No license shall be required of any person purchasing seafood for personal consumption, any place of business which is solely a restaurant, or any person who operates a business which is subject to local license taxes under § 58.1-3703 and who has in his possession no more than one bushel of peeler crabs to be sold as bait.

(1970, c. 726, § 28.1-119.1; 1979, c. 274; 1980, c. 218; 1984, c. 316; 1988, c. 27; 1992, c. 836.)

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§ 28.2-228.1. Seafood landing licenses.

A. The Commission may by regulation establish licenses for the landing of seafood in Virginia, the fee for which shall not exceed \$150. The regulations may limit the number of such licenses that may be issued and may establish eligibility criteria. Fees collected from the sale of seafood landing licenses shall be deposited to the Marine Fishing Improvement Fund established in § 28.2-208.

B. The Commission may grant exceptions to the license requirement established in subsection A to any person registered as a commercial fisherman under the provisions of § 28.2-241.

C. The following shall be Class 3 misdemeanors: (i) landing seafood without the license that may be required under this section and (ii) failure to produce or have available for inspection the license that may be required under this section when requested by any officer. Failure to produce the license is prima facie evidence that the person is landing seafood without a license.

(1996, c. 214.)

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§ 28.2-229. When licenses terminate; proration and refund not permitted.

A. The Commission shall issue all licenses on an annual basis. All licenses shall be valid from January 1 of each year or their later date of purchase and expire on December 31 of the year in which issued.

B. Refunds shall not be made or prorated if the fishing effort is reduced, or seasons are closed (i) in order to promote conservation of the fisheries or (ii) due to natural conditions. Refunds shall not be made for any license that is suspended or revoked.

(Code 1950, §§ 28-10.1, 28-61, 28-71; 1952, c. 653; 1954, c. 179; 1960, c. 517; 1962, c. 406, §§ 28.1-21, 28.1-59, 28.1-70; 1966, c. 695; 1974, cc. 85, 313; 1978, cc. 347, 358; 1979, cc. 18, 274; 1980, c. 605; 1982, c. 461; 1983, c. 299, §§ 28.1-47, 28.1-47.1; 1988, c. 710; 1991, c. 411; 1992, c. 836.)

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§ 28.2-230. Penalty for false statements or altering a fishing license; penalty.

It shall be unlawful for any person to (i) subscribe to a materially false statement in applying to secure a license to fish or (ii) alter or change such license.

A violation of this section shall be a Class 1 misdemeanor.

(Code 1950, § 28-66; 1962, c. 406, § 28.1-64; 1981, c. 525; 1992, c. 836.)

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§ 28.2-232. Revocation of licenses.

The Commission may revoke and prohibit the issuance, reissuance, or renewal of any licenses if, after a hearing held after ten days' notice to the applicant or licensee, it finds that the person has violated any provision of this subtitle.

The duration of the revocation and prohibition shall be fixed by the Commission up to a maximum of two years, taking into account (i) evidence of repeated or habitual disregard for conservation, health and safety laws and regulations; (ii) abusive conduct and behavior toward officers; and (iii) the severity of any damage that has occurred, or might have occurred, to the natural resources, the public health, or the seafood industry.

An appeal from the Commission's decision may be taken to the courts as provided in Article 3 (§ 28.2-216 et seq.) of this chapter.

(1962, c. 406, § 28.1-36; 1970, c. 610; 1989, c. 2; 1992, c. 836.)

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§ 28.2-241. Registration of commercial fishermen required; exemption; penalty.

A. On and after January 1, 1993, holders of gear licenses, except those issued pursuant to § 28.2-402, issued January 1, 1992, through December 31, 1992, shall register as commercial fishermen as provided for in regulation.

B. —Repealed.]

C. On and after January 1, 1993, fishermen not registered as commercial fishermen but who desire to sell their catch shall apply to the Commission for registration as commercial fishermen. The effective date of status as a commercial fisherman shall be two years from the date the application is approved by the Commission. A person whose registration as a commercial fisherman is not effective shall not sell, trade or barter his catch or give his catch to another in order that it may be sold, traded or bartered.

D. For purposes of this section and §§ 28.2-242, 28.2-243 and 28.2-244, "commercial fisherman" means any person who fishes in tidal waters using any gear and who sells, trades or barter his catch or gives his catch to another in order that it may be sold, traded or bartered. The Commission shall provide, by regulation, for exemptions from the definition of "commercial fisherman" those persons who independently sell, trade or barter minnows and who are not part of, hired by, or engaged in a continuing business enterprise as may be defined by the Commission. Such regulation may include, but is not limited to, limits on the quantity of minnows that may be sold, traded or bartered by a person that may be exempted from the definition of commercial fisherman.

E. The cost of registration as a commercial fisherman shall be \$150 annually, due no later than the effective date of registration; however, the cost of registration for a person seventy years of age or older shall be seventy-five dollars. All fees collected from the registration of commercial fishermen shall be deposited in the state treasury and credited to the Marine Fishing Improvement Fund as established in § 28.2-208.

F. Registrations of commercial fishermen shall not be transferable.

G. Whenever a court finds that a defendant has violated any of the provisions of this section, the court shall assess a civil penalty of \$500. All civil penalties assessed pursuant to this section shall be paid into the Marine Fishing Improvement Fund as established in § 28.2-208.

H. Only commercial fishermen with valid registrations may purchase licenses pursuant to §§ 28.2-301, 28.2-501 and 28.2-702.

I. Persons who have obtained a recreational gear license pursuant to § 28.2-226.1 or § 28.2-302.1 are exempt from the provisions of this section.

(1992, cc. 493, 503; 1993, c. 219; 1994, c. 121; 1996, c. 277.)

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§ 28.2-243. Commission to promulgate regulations.

The Commission shall promulgate regulations governing the registration of commercial fishermen. The regulations shall include (i) the procedure and manner for application for registration as a commercial fisherman, (ii) the manner and form of mandatory harvest reports by commercial fishermen, and (iii) exceptions to the delay requirements pursuant to subsection C of § 28.2-241 based on scientific, economic, biological, sociological and hardship factors.

(1992, cc. 493, 503.)

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